

ISPA Measure No:
2006 BG 16 P PA 001

FINANCING MEMORANDUM

**Agreed between the European Commission and
the Republic of Bulgaria**

**Concerning the grant of assistance from the Instrument for Structural Policies for
Pre-accession to the following measure**

**Technical Assistance for Project Preparation in the Environmental Sector
in Bulgaria**

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FINANCING MEMORANDUM

The European Commission, hereinafter referred to as "the Commission", acting for and on behalf of the European Community, hereinafter referred to as "the Community" represented by the Director General for Regional Policy, Mr. Graham Meadows, for the Commission

on the one part, and

The Government of Bulgaria, hereinafter referred to as "the beneficiary"

on the other part,

HAVE AGREED AS FOLLOWS:

Article 1

The measure referred to in Article 2 below shall be implemented and financed out of the budgetary resources of the Community in accordance with the provisions set out in this Memorandum. The measure referred to in Article 2 below shall be implemented in line with the General Conditions annexed to the Framework Agreement signed between the Commission and the beneficiary and supplemented by the terms of this Memorandum and the provisions annexed hereto.

Article 2

Identification of the measure

The Instrument for Structural Policies for Pre-accession shall contribute, by way of a grant, towards the financing of the following measure as described in Annex I:

Measure number: 2006 BG 16 P PA 001

Title: Technical Assistance for Preparation of Cohesion/Structural Fund projects in Water and Solid Waste Sectors in Bulgaria

Duration: **Start date:** The date of signature of the financing memorandum by the Commission

End date: 31 December 2010

Location: Bulgaria

Group: Environment

Article 3

Commitment

1. The maximum public or equivalent expenditure which may be taken into account for the purpose of calculating assistance shall be € 18 846 748;
2. The rate of Community assistance granted to the measure is fixed at 85 % of total public or equivalent expenditure as indicated in the financing plan in Annex II;
3. The maximum amount of assistance from the Instrument for Structural Policies for Pre-accession is fixed at € 16 019 736;
4. An amount of € 16 019 736 is committed from the 2006 budget under budgetary line 13.050101. Commitments in respect of subsequent instalments shall be based on the initial or revised financing plan for the measure, subject to the state of implementation of the measure and to budgetary availability.

Article 4

Payments

1. Community assistance shall cover payments on the measure for which legally binding commitments have been made by the beneficiary and for which the requisite finance has been specifically allocated. These payments must relate to the services described in Annex I.
2. Payments made before date of signature of financing memorandum by the Commission shall not be eligible for assistance from the Instrument for Structural Policies for Pre-accession.
3. The measure described in Annex I and payments by the body responsible for the implementation of the measure shall be completed no later than 31 December 2010.

The report required for the payment of the final balance should be submitted not later than 6 months after this date.

4. The advance payment is fixed at € 6 407 894¹, which shall be transferred as follows:
 - An amount of € 3 203 947 is paid out after signature of this memorandum by the beneficiary;
 - The remainder is paid out following the signing of the first technical assistance contract.

¹ In case of TA measures the National Authorities are obliged to pay advances to the companies exceeding in some cases the standard 20%. Therefore 40% FM advance payment is justified for these types of measures.

Article 5

Respect of Community law and policies

The measure shall be carried out in compliance with the relevant provisions set out in the Europe Agreements and shall contribute to the achievement of Community policies, in particular those concerning environmental protection and improvement.

Article 6

Intellectual property

The Beneficiary and the authority responsible for implementation mentioned in Annex I point 3 shall ensure that they acquire all necessary intellectual property rights to studies, drawings, plans, publicity and other material made in conjunction with planning, implementation, monitoring and evaluation of the project. They shall guarantee that the Commission, or any body or person delegated by the Commission shall have access and the right to use such material. The Commission will only use such material for its own purpose.

Article 7

Permits and authorisations

Any type of permits and or authorisations required for the implementation of the measure must be provided by the competent authorities of the Beneficiary in due time and in accordance with national law.

Article 8

Specific conditions related to the measure

The presence of a project in the indicative list contained in Annex I does not constitute in any way a commitment of the Commission to grant financial support for the construction phase of the project.

Article 9

The implementation provisions described in the Annexes to this financing memorandum form an integral part of it.

Non-compliance with the conditions and implementation provisions shall be dealt with by the Commission according to the procedure stipulated in Annex III.1. Section VIII.

Article 10

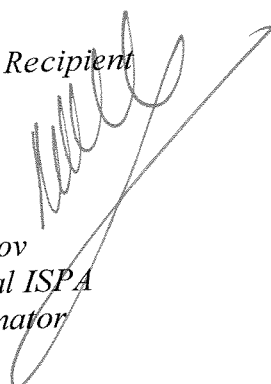
The authentic text of this financing memorandum is the present document as signed hereunder.



Done at 19 March 2007

Done at Brussels, [...] 11 DEC. 2006

For the Recipient



L. Datzov
National ISPA
Coordinator

For the Community



G. Meadows
Director General



List of Annexes

- Annex I Description of measure
- Annex II Financing plan
- Annex III
- Annex III.1 ISPA Financial Implementation provisions
- Annex III.2 Provisions governing eligibility of expenditure for measures assisted by ISPA
- Annex III.3 Model for submission to the Monitoring Committee and request for modification
- Annex III.4 Management and control systems for assistance granted from ISPA and the procedure for making financial corrections
- Annex III.5 Agreement with respect to irregularities and recovery of sums wrongly received under ISPA
- Annex III.6 Information and Publicity requirements

Description of measure
(summary)

Commission code No: 2006 BG 16 P PA 001

1. MEASURE TITLE

Technical Assistance for Preparation of Cohesion/Structural Fund projects in Water and Solid Waste Sectors in Bulgaria

2. AUTHORITY MAKING THE APPLICATION (National ISPA Co-ordinator)

2.1. Name: Ministry of Finance

2.2. Address: 102, Rakvoski Street, 1040 Sofia, Bulgaria

E-mail: l.datzov@minfin.bg

3. AUTHORITY RESPONSIBLE FOR IMPLEMENTATION (as defined at Section II (2) of Annex III.2)

3.1. Name: Ministry of Environment and Water

3.2. Address: 67 William Gladstone Street, Sofia, Bulgaria

E-mail: smarinova@moew.government.bg

4. FINAL BENEFICIARY (in case it is a different body from the authority mentioned under 3)

n/a

5. LOCATION

5.1. Beneficiary country: Bulgaria

6. DESCRIPTION

6.1. Background

This measure aims at helping the Bulgarian authorities in a set of activities directly linked to the preparation of the sound and viable projects suitable for grant financing under Cohesion Fund and Structural funds. Specifically this measure will help to prepare a set of 7 regional waste management measures and 10 water management projects.

6.2. Components of the project:

6.2.1. Component 1: Solid waste management

The ISPA measure provides the framework for the provision of technical assistance for the preparation of a future group of regional waste management projects with a view to apply for Cohesion Fund / Structural Funds co-financing. The objective is to assist 7 regions to prepare a set of solid waste projects, including the necessary feasibility studies and update of the regional waste management systems to help them to comply with EU legislation.

For the 7 regions and their municipalities, the ISPA measure will comprise of, among other, the preparation of the institutional arrangements for the implementation of the measure and the future operation of the assets, preparation of feasibility studies for the priority investments, CF/SF applications incl. necessary annexes (financial analysis, CBA, affordability analysis, etc.) and the preparation of the works tender documents.

The indicative list of regions includes Levski, Borovo, Veliko Tarnovo, Varna, Stara Zagora, Lukovit and Kostenetz.

These regions include the following municipalities (which may be served by the proposed facilities):

1. Levski – Belene, Nikopol, Svistov, Levski and Pavlikeni;
2. Borovo – Borovo, Biala, Dve Mogili, Tsenovo, Polski Trambesh and Opaka;
3. Veliko Tarnovo – Veliko Tarnovo, Elena, Zlataritza, Liaskovetz, Gorna Oriahovitza and Strazitsa;
4. Varna – Varna, Askakovo and Beloslav;
5. Stara Zagora – Stara Zagora, Radnevo, Opan, Galabovo, Chirpan, Bratia Daskalovi, Kazanlak, Gurkovo, Nikolaevo, Pavel Banja, Maglish and Tvarditsa;
6. Lukovit – Lukovit, Roman, Yablanitsa, Cherven Briag and Teteven;
7. Kostenetz – Kostenetz, Ihtiman, Samokov and Dolna Banya.

The measure covers populations ranging between a maximum of 420 000 (Stara Zagora region) to a minimum of 80 000 (Borovo region).

This section of the ISPA measure should be able to prepare interventions in the waste sector for an estimated value of € 120 million covering a population of approximately 1.393.000 inhabitants.

The terms of reference for each technical assistance assignment are subject to the prior approval of the Commission.

The Consultant selected under each individual Technical Assistance assignments shall undertake the following activities:

Phase I

(i) Institutional Analysis

The Consultant should analyze the readiness of the municipalities concerning the establishment of the regional waste associations, analyze existing waste management systems and their legal background. The analysis should mainly assess the implementing capacity, appropriateness of the institutional framework and the capacity of the final beneficiary to manage the waste management process.

This subcomponent should lead to the establishment of the Regional Waste Management Association (RWMA) prior to the design phase of this TA (here called phase II). The Consultant should therefore ensure that the legislation and legal agreements concerning all the municipalities, together with the financial commitment for constructing and operating the waste management system, are clearly identified and the municipalities are financially and legally committed to the measure. The system and responsibility for collection of waste and operation of the landfill and other facilities is critical. The future alternatives and recommendations for operating the system, including participation of the private sector, should be clearly addressed. Solidarity principle should be included in the scheme.

Phase II

The launching of Phase II is conditional on the establishment of the Regional Waste Management Associations under conditions acceptable to the Commission.

(i) Review and Update of the Existing Documents

The Consultant should review and update the documents, mainly the existing studies, plans and institutional arrangements for regional waste management, proposals or existing structures of the waste collection systems and short - and 20 years long-term investment plans for each of the 7 regions.

(ii) Technical analysis

The Consultant shall prepare waste generation forecasts for both urban and rural areas and divided into waste streams. The forecast shall be base for preparing the design and for determining the capacity of all facilities as well as for preparing the financial analysis. For the most likely forecast the Consultant shall develop and

assess different technically, environmentally and financially liable waste management scenarios. For each scenario the Consultant shall propose the most feasible system for interim waste storage, collection of recyclables, waste collection, long distance transportation, waste recovery and treatment facilities and regional landfills.

(iii) Identification of the Priorities

The Consultant shall analyse the priority investment needs in each of the regions. The investment needs shall be divided into short -, medium- and long – term priority needs. Only the short – term priority needs shall be further prepared in a view to apply for Cohesion Fund / Structural Fund funding. The Consultant shall propose to the Regional Waste Management Association a list of the individual project components which will form part of an application for CF/SF funding to improve the solid waste management in the 7 regions. For each identified component, the Consultant shall ensure that adequate consideration has been given to alternative solutions.

(iv) Undertake Necessary Studies Required to Support CF/SF Application(s)

Feasibility Study: The Consultant is required to undertake feasibility studies so that it can be clearly demonstrated that the most appropriate solution has been proposed for each project component. Where an existing proposed solution is not appropriate the Consultant shall propose an alternative solution. The feasibility studies shall consider all technical, economic, institutional, environmental and health and safety aspects of the investment components and their alternatives. The Consultant should pay particular attention to developing a phased approach (the future landfill cells must be carried out progressively over the project life, financed by operating revenues). Any additional surveys/investigations that will be needed shall be identified and the Consultant shall prepare the necessary terms of reference. Existing cost estimates shall be checked/revised and shall include the environmental mitigation components and contractor's administration and management costs.

Preparation of conceptual design and cost estimates: The Consultant shall prepare conceptual designs, technical specifications and procurement strategy for the proposed infrastructure measures. Conceptual designs shall be based on recommended/agreed locations for the facilities and should reflect the findings/results from the Feasibility studies. The Consultant should propose the number, size and type of storage facilities and transfer stations, size and the content of the new regional landfills (that shall meet all the relevant EU directives and national legislation) and propose the plan for the closure of old dumpsites (the preparation of the old dumpsites rehabilitation and the relevant detailed designs will not be co-financed by this TA).

The Financial and Economic Analysis: The Consultant shall demonstrate the financial sustainability of the project by checking the income and costs of the project and the financial indicators such as the NPV and IRR. The Consultant should undertake a review of tariff setting, socio-economic studies to determine affordability and need for phasing of the investment programme, cost benefit analysis and financing structure of the project. Sensitivity analysis should be included to cover possible future changes in waste production.

Environmental Impact Assessment: The Consultant shall provide the baseline information deemed necessary for the EIA with the technical analysis, the feasibility studies and the designs prepared by him. The EIA procedure and report is outside of the work of the present Consultant, but the Consultant should review the EIAs in order to ensure that the necessary Community environmental requirements and measures will be respected and in particular ensure that the EIA, if applicable, is in accordance with Council Directives 85/337/EEC (as amended by Council Directive 97/11/EC).

(v) *Waste management collection and transport*

In line with the relevant priority of the future Operational Programme Regional Development (or any other relevant OP as OPs are still subject to modifications), the Consultant shall assist the Regional Waste Management Associations with the preparation of complimentary SF projects aimed at waste management collection and transport.

Phase III

The launching of Phase III is conditional on the submission of the information acceptable to the Commission that the sites for the regional landfills have been finally selected and should include the EIA decision.

Phase III consists of the following elements:

(i) *Preparation of CF Applications for the proposed measures*

(ii) *Preparation of the Tender Documentation*

This task will result in a complete set of works tender documents for each region. The designs should be coherent with the requirements concerning the phased approach; i.e. designs should only cover the waste management facilities necessary for the first 3 to 5 years operation of the centres.

(iii) *Preparation of the supply Tender Documents*

The Consultant shall prepare the supply tender documents concerning the municipal/regional waste management collection and transport.

6.2.2. Component 2: Water

Background:

The 2003 BG 16 P PA 004 ISPA measure is providing technical assistance for the preparation of the future integrated water projects in the seven following municipalities: Dobrich, Kurdzhali, Pernik, Plovdiv, Veliko Tarnovo, Vidin and Yambol.

This Technical Assistance is used to identify the most important investment needs in the respective agglomerations. In order for the Technical Assistance to perform the necessary studies, equipment, supply for the relevant Regional Water Companies (RWCs) was included in the budget. It included monitoring and maintenance

equipment for water and wastewater at an average of € 200,000 for each RWC, depending on the actual needs.

The following are the main outputs of this Technical Assistance, as defined in the Financing Memorandum:

(i) Investment Programme

The Consultant should review and/or complete an investment programme after appropriate surveys and studies of the water cycle. The water and wastewater system of each RWC will be reviewed with a view to arriving at a definition of long-term phased investment programme to achieve full compliance with EC Directives in the water domain. The aim of this programme is to prioritise needs and investments taking into account affordability of the investment for the population as well as local implementation capacity. The Commission and IFIs will, on the basis of a Bulgarian proposal, define the scope and the co-financing scheme for each of the selected measures.

(ii) Institutional Analysis of RWC

The Consultant should assess the implementing capacity, the appropriateness of the institutional framework and the capacity of the final beneficiary to manage the water assets. The analysis should also include assessment of the capacity for full participation in the future investment project by the beneficiary, both in the management and the execution of the future investment project.

One of the output is the identification of priority investments to be completed in the short term, in particular with a view to achieve compliance with the *acquis* within the agreed timeframe during the Accession negotiations.

The scope of the present Technical Assistance is to prepare - on the basis of this work - all the necessary documents to have these priority projects ready to be tendered as soon as possible.

Scope of the present measure:

The main outputs of the present Technical Assistance will be the following for each of the concerned municipalities:

(i) Feasibility Studies for priority investments identified with the assistance of the ISPA 2003 BG 16 P PE 004 Measure :

The feasibility studies shall review infrastructure and operational data, project definition, and shall provide preliminary design and technical specifications, alternative solutions. They shall include a thorough analysis of alternatives to ensure the most cost-effective solutions are chosen.

They shall also include economic and financial analyses. These analyses should demonstrate the financial sustainability of the project by checking the income and costs of the project, the financial indicators such as the net present value and internal rate of return.

The selected Consultant(s) should notably undertake a review of the tariff setting and socio-economic studies to determine affordability at the level of the concerned municipality. The financial analysis should help assess the viability and affordability of the proposed investments and help determine the funding gap.

Specific attention will be paid to the capacity to service loans with a view to maximise the leverage effect of any grant provided to finance the proposed investments. Close coordination mechanisms (exchange of information, etc.) will be established with the potentially interested lending institutions (in particular IFIs) as from the beginning of the activities.

The studies shall also include the preparation of sludge management plans in compliance with national and EU regulations, in cases these are not available.

(ii) Environmental Impact Assessment

The Consultant should review the information on the environmental impact of the project in order to ensure that the necessary national and Community environmental requirements and measures are respected. In particular, the Consultant shall ensure that the EIA, if applicable, is in accordance with Council Directives 85/337/EEC (as amended by Council Directive 97/11/EC). As appropriate, the Consultant shall assist in preparing all documentation requested from the project promoter.

(iii) Cohesion Fund / Structural Fund application

The Consultant shall prepare all the necessary documentation to apply for relevant EU co-financing, in line with the requirements set by the Managing Authority (ies) of the concerned Operational Programme(s) and EU regulations.

(iv) Tender documentation

The Consultant shall prepare a complete set of tender documents for the activities to be proposed for EU co-financing, in line with the relevant procurement rules.

For each of the concerned municipalities, the activities described under items (iii) "Cohesion Fund / Structural Fund application" and (iv) "Tender documentation" shall not start until (1) all the necessary procedures to comply with Council Directives 85/337/EEC (as amended by Council Directive 97/11/EC) requirements have been completed and (2) a sludge management plan in compliance with national and EU regulations has been approved by the relevant authorities.

For each of the concerned municipalities the Commission shall be informed when these two conditions have been fulfilled.

The Terms of Reference for each of the technical assistance assignments are subject to the prior approval of the Commission.

Management of the Technical Assistance

For each of the concerned municipalities, a Project Management Unit will be established. It shall include a majority of representatives of the final beneficiaries (both the municipality and the Regional Water Company) and shall be chaired by one

representative of either the municipality or the Regional Water Company. This chair person will have the responsibilities of "Project Manager". The objective is to ensure ownership of the proposed investments and to strengthen final beneficiaries in their role of project promoter during the next programming period 2007-2013. The ISPA Implementing Agency shall also be represented in this Project management Unit and will among other tasks, actively contribute to "know-how" transfer to the final beneficiaries.

The Commission shall be informed within six months following signature of the Financing Memorandum on (1) the composition of each Project Management Unit (including professional qualifications of the core staff) and (2) the conclusion of a formal agreement between the IA and the Project Management Unit defining the latter's responsibilities (including a summary description of the main arrangements).

This component will also prepare an additional 3 water projects in the municipalities of Asenovgrad, Gotze Delchev and Bansko with the same scope as defined for the previously mentioned 7 measures. Nonetheless, as these measures were not supported by the 2003 BG 16 P PA 004 ISPA TA measure, the scope of TA activities may also include the review and/or completion of the investment programme and the institutional analysis of the RWC. The TA for these 3 water projects may also include the supply of monitoring and maintenance equipment for water and wastewater systems at an average of € 200,000 for each RWC depending on the actual needs and in the same scope as the monitoring and maintenance equipment delivered to the 7 beneficiaries under the 2003 BG 16 P PA 004 ISPA TA measure. This will require a submission of the updated Indicative Procurement Plan and its approval by the Commission.

In case there are additional savings after the contracting phase of the water component, additional water measures may be added into the measure. This inclusion is subject to submission of supporting documentation similar to that in the ISPA application, and subsequent approval by the Commission.

Component 3: Technical Assistance for the contracting of the Measure

Technical Assistance is included to assist the Implementing Agency in the successful contracting of the measure (independent observers,...).

7. OBJECTIVES

This measure has the following objectives:

- to co-finance technical support to assist Bulgaria in developing a phased investment programme in order to achieve full compliance with all relevant EC Directives in the field of solid waste management for the concerned regions; in preparing applications for EU co-financing and to assist in the preparation of the corresponding tender documents;

- to co-finance technical support to assist Bulgaria in developing a phased investment programme in order to achieve full compliance with all relevant EC Directives in the field of water and wastewater for the selected cities; in preparing applications for EU co-financing and to assist in the preparation of the corresponding tender documents;

8. PROJECT PREPARATION WORK IMPLEMENTATION

8.1. Indicative timetable for the solid waste management component

Measure	Commencement	Completion
Establishment of the RWMA	May 2006	September 2006
Preparation of the Service contract	September 2006	May 2007
Service contract activities: Phase II	May 2007	March 2008
Service contract activities: Phase III	March 2008	November 2008

8.2. Indicative timetable for component 2, "water"

Measure	Commencement	Completion
Preparation of the Service Tender Dossier	January 2006	June 2006
Service contract: activities (i) and (ii)	January 2007	December 2007
Service contract activities (iii) and (iv)	June 2008	December 2009

9. COST AND ASSISTANCE (IN €)

Indicative Cost breakdown

Item	Total Eligible cost (€)	Expenditures incurred before application (€)
TA Component 1 (including Phase I FWC)	7 680 000 (200 000)	-
TA Component 2	11 085 540	
TA Component 3	81 208	
TOTAL (€)	18 846 748	-

Total cost	Private sector contribution	Non eligible expenditure	Total eligible cost	ISPA grant	Grant Rate %
18 846 748	-	-	18 846 748	16 019 736	85%

10. INVOLVEMENT OF IFIs

n.a.

11. PROCUREMENT PLAN

The present ISPA Measure will be contracted according to the indicative procurement plan appended as annex I.a.

Comments:

Component 1: solid waste management

One FWC contract will be signed covering the Phase I, subcomponent (i) – the institutional analysis and establishment of the Regional Waste Management Associations.

Two separate tenders shall be launched for two different groups of municipalities:

The indicative composition is as follow:

Tender 1: Levski, Borovo, Veliko Tarnovo and Varna

Tender 2 : Stara Zagora, Lukovit and Kostenetz

For each one of these tenders, the corresponding contract can not be signed before the Regional Waste Management Associations (RWMAs) are established under the terms acceptable for the Commission.

The launch of the Phase III (preparation of the CF/SF applications and preparation of the detailed designs) cannot be engaged before the sites for the regional landfills are finally selected and the EIA has been finalized.

Component 2: water

Four service tender will be launched for four different groups of municipalities.

The indicative composition is as follow:

Tender 1: Plovdiv and Dobrich

Tender 2: Veliko Tarnovo, Kurdzhali and Yambol

Tender 3: Vidin and Pernik

Tender 4: Asenovgrad, Gotze Delchev and Bansko

For the first three tenders, the corresponding contract can not be signed before a draft Investment Programmes have been prepared for the corresponding municipalities by the consultancy company contracted under ISPA 2003 BG 16 P PE 004 measure to this aim. These investments Programmes should be sent to the relevant Project Management Units. For each tender, the Commission shall be informed when this condition has been fulfilled.

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ANNEX I.a

Indicative Procurement Plan

Tender N°	Description of works and services to be tendered	Type of contract	Provisional month of launch of tender	Rate of reimbursement of invoices relating to specific contract
1.	Institutional building for the RWMA	FWC	May 2006	85%
2.	Project preparation for the waste sector	Service contracts	September 2006	85%
3.	Project preparation for the water sector (component 2)	Service contracts	July 2006	85%
4.	Technical assistance for the contracting of the Measure	FWCs	November 2006	85%

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FINANCIAL PLAN (based on commitments from EU budget)

Title of measure: **Technical Assistance for Project Preparation in the Environmental Sector**

ISPA No: **2006 BG 16 P PA 001**

Year	Total Cost 1	Non Eligible Cost 2	Eligible Cost							Total 4 (%) =3/1	ISPA 6 (%) =5/3	National authorities				Loan from IFI* (for the Eligible Cost)	
			Total 3 =5+7+8+9+10			Central Government 7	Regional Authority 8	Local Authority 9	Other* 10			11	12 (%) =11/1				
2000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2001	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2002	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2003	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2004	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2005	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2006	18 846 748	-	18 846 748	100,0%	16 019 736	85,0%	2 827 012	-	-	-	-	-	-	-	-	-	0,0%
non annualised	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	18 846 748	-	18 846 748	100,0%	16 019 736	85,0%	2 827 012	-	-	-	-	-	-	-	-	-	0,0%

* to be specified

ANNEX III.1

ISPA Financial Implementation Provisions

Section I

Forms and rate of assistance

- (1) Community assistance under ISPA may take the form of non-repayable direct assistance, repayable assistance or any other form of assistance.

Assistance repaid to the managing authority or to another public authority shall be reapplied for the same purpose.

- (2) The rate of Community assistance granted under ISPA may be up to 75% of public or equivalent expenditure, including expenditure by bodies whose activities are undertaken within an administrative or legal framework by virtue of which they are regarded as equivalent to public bodies. The Commission may propose to increase this rate to up to 85%, in particular where it considers that a rate higher than 75% is required for realising measures essential for achieving the general objectives of ISPA.

The rate of assistance and the maximum amount of the ISPA grant shall be specified in the financial memorandum relating to a measure.

Save in the case of repayable assistance or when there is a substantial Community interest, the rate of assistance shall be reduced to take into account:

- (a) The availability of co-financing;
 - (b) The measure's capacity to generate revenues; and
 - (c) An appropriate application of the polluter-pays principle.
- (3) Measures which generate revenues in accordance with paragraph 2(b) shall be those concerning:
- (a) Infrastructure the use of which involves fees borne by users;
 - (b) Productive investments in the environment sector.

Guidelines for application of the polluter pays principle have been elaborated by the Commission.

- (4) Preliminary studies and technical support measures may be financed exceptionally at 100% of the total cost.
- (5) Measures covered by a financing memorandum are to be implemented by the beneficiary country in close collaboration with the Commission, which will retain responsibility for the utilisation of appropriations.

Section II Commitments

- (1) The Commission implements expenditure under ISPA in accordance with the Financial Regulation applicable to the general budget of the European Communities on the basis of the financing memorandum to be drawn up between the Commission and the beneficiary country.

However, annual budgetary commitments in respect of assistance granted to measures shall be carried out in one of the following two ways:

- (a) Commitments in respect of the measures assisted by ISPA to be carried out over a period of two or more years shall, as a general rule and subject to point (b), be effected in annual instalments.

The commitment in respect of the first annual instalment will be made by the Commission when it signs the financing memorandum relating to the measure.

This commitment will correspond to the amount of grant mentioned in the first year indicated in the financing plan. During the period leading to full decentralisation, it should be sufficient to cover the works to be contracted in the first years.

Commitments in respect of subsequent annual instalments shall be based on the initial or revised financing plan for the measure. They will, in principle, be granted at the start of each financial year and at the latest by 1 April of the year in question, provided that the forecast expenditure for the coming year justifies it and that the progress of the works demonstrates that the project is proceeding satisfactorily towards completion and subject to budgetary availability.

- (b) For measures with a duration of less than two years or for which the Community assistance does not exceed Euro 20 million a first commitment of up to 80% of the total assistance granted may take place when the Commission signs the financing memorandum relating to the measure.

The remainder will be committed provided that the progress of the works demonstrates that the project is proceeding satisfactorily towards completion and subject to budgetary availability.

- (2) Except in duly justified cases, the assistance committed to a measure on which substantial work has not begun within two years from the date of the signature by the Commission of the financial memorandum relating to the measure will be cancelled.

In any case the Commission shall inform in good time the beneficiary country and the designated authority whenever there is a risk of cancellation.

Section III Payments

- (1) Payments may take the form of either advance payments, intermediate payments or payments of the final balance.

Intermediate payments and payments of the balance shall relate to expenditure actually certified and paid, which must be supported by receipted invoices or accounting documents of equivalent probative value.

- (2) Advance payments

As a general rule an advance payment of up to 20% of total assistance from ISPA as initially decided shall be paid to the designated authority as defined in (9).

The advance payment is as a general rule transferred in the following ways:

- A first instalment of up to half of the advance is paid when the beneficiary country signs the financing memorandum;
- The remainder is paid out following the signing of the first contract, normally the first works contract.

Deviations from the general rule have to be approved by a Commission decision in the financing memorandum relating to the measure.

All or part of an advance payment shall be repaid by the designated authority referred to in paragraph (2) if no payment application is sent to the Commission within 12 months from the date on which the advance payment is paid. The amount of the advance to be repaid will be determined by the Commission on the basis of eligible expenditure effectively paid. Repayment of the advance does not lead to the cancellation of the Community assistance.

- (3) Intermediate payments

Intermediate payments are made by the Commission to the designated authority on request and provided that the measure is progressing satisfactorily towards completion and shall be made to refund the expenditure certified and actually paid, subject to the following conditions:

- The beneficiary country has submitted a report describing the progress of the measure in terms of its physical and financial indicators and its conformity with the financing memorandum, including where appropriate any specific conditions attached to the assistance,
- The observations and recommendations of the national and/or Community inspection authorities have been acted upon,
- Any technical, financial and legal problems that have arisen and the measures taken to correct them have been indicated,

- Any departures from the original financing plan have been analysed,
- The steps taken to publicise the measure have been described.

The beneficiary country shall be informed by the Commission if one of the above mentioned conditions is not fulfilled;

The standard model provided by the Commission for payment claims and for financial and physical progress reports should be used.

- (4) Beneficiary countries shall ensure that applications for payment are submitted to the Commission as a general rule three times a year, by 1 March, 1 July and 1 November at the latest.
- (5) The total amount of the payments made under (2) and (3) may not exceed 80% of the total assistance granted. The Commission may increase this percentage to 90% in justified cases.
- (6) Payment of the balance of Community assistance

The balance of Community assistance calculated on the basis of expenditure certified and actually paid will be paid provided that:

- The measure has been carried out according to its objectives,
- The measure has met its specific conditions as mentioned in the financing memorandum,
- The final report referred to in section V is submitted to the Commission,
- The designated authority or body referred to in paragraph 2 submits an application for payment to the Commission within six months of the deadline for completion of the work and for expenditure laid down in the financing memorandum,
- The beneficiary country certifies to the Commission that the information given in the application for payment and in the report is correct,
- The beneficiary country has sent to the Commission the declaration referred to in Annex III.4.C,
- All the information and publicity measures drawn up by the Commission under Annex III.6 have been implemented
- When the management of aid under a measure is conferred on implementing agencies in applicant countries on a decentralised basis, the beneficiary country provides the Commission with all the information necessary to verify that Community rules concerning public procurement have been complied with, in particular as regards the publication of tender notices and the submission of tender evaluation and contract award reports

and that all conditions specified in the financing memorandum have been complied with.

- (7) If the final report referred to above is not sent to the Commission within 6 months of the final date for completion of the works and payments as specified in the financing memorandum, that part of the assistance representing the remaining balance for the measure should be cancelled.
- (8) Requests for interim and final payment presented by a beneficiary country are accompanied by a declaration of the National Authorising Officer that declared payments only relate to expenditure supported by receipted invoices or accounting documents of probative value and which comply with the provisions governing eligibility of expenditure for projects assisted by ISPA as specified in Annex III. 2.
- (9) All payments of aid granted by the Commission under this financing memorandum shall be made to a central entity, the National Fund, designated by the beneficiary country to receive such payments. As a general rule, payments shall be made by the Commission to a single bank account designated by the beneficiary country no later than two months after receipt of a valid and complete application for payment. The National Fund shall transfer as quickly as possible and in full the ISPA contribution to the body responsible for the implementation.
- (10) The National Fund, as headed by the National Authorising Officer, is to have overall responsibility for the management of the funds within the beneficiary country concerned. This officer shall also be responsible for refunding any overpaid or unduly amounts to the Commission.

The responsibilities of the National Authorising Officer are laid down in the Memorandum of Understanding concluded between the Commission and the beneficiary countries.

Section IV Use of the Euro

- (1) The amounts in the applications for assistance, together with the relevant financing plan, shall be expressed in Euro.
- (2) The amounts of assistance and the financing plans approved by the Commission shall be expressed in Euro.
- (3) Declarations of expenditure in support of the corresponding payment applications shall be expressed in Euro.

The conversion rate to be used shall be the Commission's financial accounting rate applicable for the month in which the declaration of expenditures are registered in the accounting documents of the responsible authorities in charge of the financial management of the project. The monthly conversion rate is fixed according to the provision mentioned in Article 7 (2) of the Commission Regulation (EC, Euratom) n° 2342/2002 of 23 December 2002 laying down

rules for the implementation of General Regulation (EC, Euratom) n° 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities. The conversion rate is the rate on the penultimate working day of the month preceding that for which rates are established. The Commission will inform the responsible authorities of this rate².

- (4) Payments of financial assistance by the Commission shall be made in Euro to the authority designated by the beneficiary country to receive such payments.

Section V **The Final Report**

The authority or body responsible for the measure is to submit a final report to the Commission within six months of completion of the measure. The final report will contain the following:

- (a) a description of the work undertaken, accompanied by physical indicators, quantification of expenditure by category of work and the measures taken with regard to the specific clauses contained in the decision to grant assistance;
- (b) certification of the conformity of the work with the decision granting assistance;
- (c) a first assessment of the extent to which the expected results have been achieved, including notably:
 - the effective date of implementation of the measure;
 - an indication of the way in which the measure will be managed once completed;
 - confirmation, if appropriate, of financial forecasts, especially as regards operating costs and expected revenues;
 - confirmation of the socio-economic forecast, especially the expected costs and benefits;
 - an indication of the actions taken to ensure protection of the environment and their cost including compliance with the polluter-pays principle.
 - the date at which the assisted measure became operational,
- (d) information relating to publicity actions.

Section VI **Amendments to financing memorandum**

- (1) If the public or equivalent expenditure actually incurred differs from the expenditure initially planned, the Community assistance granted will be varied

² <http://europa.eu.int/comm/dg19/inforeuro/fr/index.htm>

to take account of this but may not exceed the maximum amount stated in the financing memorandum.

A change in the rate of community assistance from the initially granted rate or of the maximum of the grant will require a modification of the financing memorandum in accordance with the procedure described in paragraph (3).

- (2) If, when the financing plan for a project is amended, the Community commitments and/or payments already made exceed the amounts entered in the amended financing plan, the Commission shall, when authorising the first financial operation (commitment or payment) after that amendment, make an adjustment to take account of the amount over-committed or over-paid.
- (3) Any amendments to the financing memorandum shall be made in accordance with the following procedures:
 - (a) Amendments which entail a substantial change in the objectives or characteristics of the project, or a substantial change in the financing plan or schedule of expenditure, shall be made by means of a financing memorandum taken in response to a request by the beneficiary country or at the initiative of the Commission after consultation with the beneficiary country. The definition of a "substantial" change is given within the provisions governing eligibility of expenditure.
 - (b) In the case of other amendments, the beneficiary country shall send to the Commission a proposal for amendment. The Commission shall make its comments or signify its agreement within twenty working days of receipt of the proposal. The amendments shall be adopted when the Commission has given its agreement. The ISPA management Committee is informed of such amendments.
 - (c) Any change in annual expenditure of less than 25% of the total expenditure planned for the project shall not be regarded as a substantial change of the financing plan and of the schedule of expenditure.

Section VII

Financial Management and Control

- (1) The Beneficiary countries shall:
 - (a) establish management and control systems which ensure:
 - The proper implementation of the assistance granted under this Memorandum in accordance with the principles of sound financial management,
 - The separation of the functions of management and control,
 - That expenditure declarations presented to the Commission are accurate and emanate from accounting systems based on supporting documents which are open to verification;

- (b) verify on a regular basis that the measures financed by the Community have been properly carried out;
 - (c) prevent irregularities and take action against them;
 - (d) recover any amounts lost as a result of irregularity or negligence.
- (2) Appropriate internal and external controls are to be carried out in accordance with internationally accepted audit standards by the competent national bodies, which must be independent in order to perform this function. Each year an audit plan and a summary of the findings of the audits carried out are to be sent to the Commission. Audit reports will be at the disposal of the Commission.
- (3) Without prejudice to checks carried out by Beneficiary countries, the Commission services and the Court of Auditors may, through their own staff or duly authorized representatives, carry out on-the-spot technical or financial audits, including sample checks and final audits.
- (4) The Beneficiary country is to ensure that when Commission staff or its duly authorised representatives and or the Court of Auditors perform checks, these persons have the right to inspect on-the-spot all relevant documentation and accounts pertaining to items financed under the Financing Memorandum. The Beneficiary countries are to assist the Commission services and the Court of Auditors to carry out audits relating to the utilisation of funds granted under ISPA. The provisions of Annex III.5 shall be applicable to on the spot checks by the Commission.
- (5) The detailed provisions on financial management and control are set out in Annex III.4.

Section VIII Monitoring

The beneficiary countries and the Commission shall ensure that the implementation of the measure is monitored and evaluated in accordance with the following provisions:

- (1) Monitoring committees are to be set up by arrangement between the beneficiary country concerned and the Commission. The authorities or bodies designated by the beneficiary country, the Commission and where appropriate, the EIB and/or other co-financing institution will be represented on the committees. Where regional and local authorities and private enterprises are competent for the execution of a project and where they are directly concerned by a project they will also be represented on such committees.
- (2) Monitoring is to be carried out by means of jointly agreed reporting procedures, sample checks and, if appropriate by the establishment of ad hoc committees. It is to be carried out by reference to physical and financial indicators. The indicators will relate to the specific character of the project and its objectives. They will be arranged in such a way as to show the stage reached in the measure in relation to the plan and objectives originally laid down and the progress achieved on the management side and any related problems.

- (3)
 - (a) For each measure, the National ISPA Coordinator is to submit progress reports to the Commission within three months of the end of each full year of implementation.
 - (b) For the meetings of the monitoring committees the National ISPA Coordinator is to submit progress reports according to the standard model provided by the Commission. The report has to be in the hands of the Commission 15 working days ahead of the scheduled meeting.
- (4) On the basis of the results of monitoring and taking account of the comments of the monitoring committee, the Commission is to adjust the amounts and conditions for granting assistance as initially approved, as well as the financing plan envisaged, if necessary on a proposal by the beneficiary countries.

The Commission will define the appropriate arrangements for these adjustments differentiating them according to their nature and importance.

Section IX

Transparency in the award of contracts, eligibility, procurement rules, rules of origin

Article 1

The procedure to be followed for the award of works, supply and service contracts will respect the key principles enshrined in Part Two, Title IV of the Financial Regulation³ (external actions) applicable to the general budget of the European Community.

Article 2

Eligibility

- (1) Participation in the award of procurement or grant contracts financed under ISPA shall be open to all nationals of and legal persons who are established in a Member State of the European Community, all legal persons who are established in a Member State of the European Economic Area, all nationals of and legal persons who are established in any country that is a beneficiary of the Council Regulation establishing an Instrument for Structural Policies for pre-accession (ISPA Regulation), and all nationals of and legal persons who are established in Albania, Bosnia and Herzegovina, Turkey, Serbia, including Kosovo under UNSCR N° 1244, Montenegro and the Former Yugoslav Republic of Macedonia.
- (2) Participation in the award of procurement or grant contracts financed under ISPA shall in addition be open to all legal persons who are established in any country other than those referred in the paragraph above, where reciprocal access to their

³ Council Regulation (EC, Euratom) No 1605/2002

external assistance has been established in conformity to Article 6 of Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance.

- (3) The specifications shall therefore require tenderers to state their nationality or place of establishment and to present the supporting evidence normally acceptable under their own law.
- (4) Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to international organisations.
- (5) In duly justified cases, such as co-financing with International Financing Institutions and after early examination by the ISPA Management Committee, the European Commission may in addition allow third country nationals and legal persons established in third countries to tender for contracts.

Article 3

Transparency in the award of contracts

- (1) The beneficiary countries shall take the necessary measures to guarantee as wide a participation as possible. To this end, they shall as a minimum adhere to the publication requirements laid down in the applicable procurement rules referred to in Article 4.
- (2) They will also eliminate any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons eligible to participate in the award of procurement or grant contracts.

Article 4

Procurement rules

- (1) Detailed procedures for tendering and contracts to be followed as a general rule are laid down in the Practical Guide to contract procedures for EC external actions⁴ issued by the European Commission.
- (2) However, the procurement rules appropriate to the European Bank for Reconstruction and Development (EBRD) may be used for contracts that are implemented under ISPA measures co-financed by the EBRD, as authorised in their respective ISPA Financing Memoranda.

⁴ http://ec.europa.eu/comm/europeaid/tender/gestion/index_en.htm

Article 5

Experts

All experts engaged by tenderers as defined in Articles 2 and 8 may be of any nationality. This article is without prejudice to the qualitative and financial requirements set out in the Community's procurement rules.

Article 6

Rules of origin

All supplies and materials purchased under a contract financed under an ISPA Financing Memorandum must originate from the Community or from an eligible country as defined in Articles 2, 7 and 8. The term 'origin' for the purpose of this article is defined in the relevant Community legislation on rules of origin for customs purposes.

Article 7

Derogations from the rules of eligibility and origin

- (1) In duly substantiated exceptional cases, the European Commission may extend eligibility to legal persons from a country not eligible under Article 2.
- (2) In duly substantiated exceptional cases, the European Commission may allow the purchase of supplies and materials originating from a country not eligible under Article 2.
- (3) Derogations as provided for in paragraphs (1) and (2) may be justified on the basis of unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.

Article 8

Operations involving international organisations or co-financing

- (1) Whenever ISPA funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant to Article 2 as well as to all legal persons who are eligible pursuant to the rules of that organisation, care being taken to ensure that equal treatment is afforded to all donors. The same rules shall apply in respect of supplies, materials and experts.
- (2) Whenever ISPA covers an operation co-financed with a third country, subject to reciprocity as defined in Article 2(2), or with a regional organisation, or with a

Member State, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant to Article 2 as well as to all legal persons who are eligible under the rules of such third country, regional organisation or Member State. The same rules shall apply in respect of supplies, materials and experts.

- (3) In the case of contracts for which joint co-financing by the European Bank for Reconstruction and Development (EBRD) is foreseen in the ISPA Financing Memorandum, the ISPA Financing Memorandum may authorise the use of the EBRD Procurement Rules and Procedures.

Section X Transparency in Accounting and project reports

The beneficiary country shall ensure that, for the measure to which the financing memorandum relates, all public or private bodies involved in the management and implementation of the operations maintain either a separate accounting system or an adequate accounting codification of all transactions concerned which will facilitate the verification of expenditure by the Community and by national control authorities. They must also ensure that all expenditure is correctly attributed to the project concerned.

The responsible authorities are to keep available all the supporting documents regarding expenditure on any project for a period of five years following the last payment in respect of a project.

Section XI Ex-post Evaluation

Ex-post evaluation is to cover the utilisation of resources and the effectiveness and efficiency of assistance and its impact. It is to cover the factors contributing to the success or failure of implementation of measures and the achievements and results

After the completion of measures, the Commission and the beneficiary countries will therefore evaluate the manner, including the efficient and effective use of resources, in which they have been carried out. The evaluation will also cover the actual impact of their implementation in order to assess whether the original objectives have been achieved. This evaluation will, inter alia, address the contribution made by measures to the implementation of Community policies on the environment or its contribution to extended Trans-European networks and common transport policies. They will also assess the environmental impact of the measures.

Annex III.2

Provisions governing eligibility of expenditure for measures assisted by ISPA

Section I Domain of expenditure

The ISPA provides assistance for the following measures:

- (1) Environmental projects enabling the beneficiary countries to comply with the requirements of Community environmental law and with the objectives of the Accession Partnerships;
- (2) Transport infrastructure projects which promote sustainable mobility and in particular those that constitute projects of common interest based on the criteria of Decision N° 1692/96/EC⁵ and those which enable the beneficiary countries to comply with the objectives of the Accession Partnerships; this includes interconnection and interoperability of national networks as well as with the Trans-European Networks together with access to such networks;
- (3) Preliminary studies, appraisals, and technical support measures including information and publicity actions related to eligible projects. This includes technical and administrative assistance to the mutual benefit of the Commission and the beneficiary countries which do not fall within the standing remit of the national public administration, covering the identification, preparation, management, monitoring, audit and supervision of projects.

The rules specified in sections II to XII below relate to projects listed under items 1 and 2 above they are, however, applied by analogy to decisions for projects listed under item 3.

Section II Basic definitions and concepts.

(1) Concept of project, stage of a project and group of projects

For the purpose of this document, the following definitions shall apply:

- a) a "project" shall be an economically indivisible series of works fulfilling a precise technical function and with clearly identified aims.
- b) a "technically and financially independent stage" shall be a stage which can be identified as operational in its own right.

A stage may also cover preliminary, feasibility and technical studies needed for carrying out a project.

⁵ Decision N° 1692/96/EC of the European Parliament and the Council of 23 July 1996 on Community guidelines for the development of the Trans-European Transport network.

- c) projects meeting the following three conditions may be grouped:
- they must be located in the same water course or catchment area or situated along the same transport corridor;
 - they must be carried out under an overall plan for the water course or catchment area or corridor with clearly identified goals;
 - they must be supervised by a body responsible for co-ordinating and monitoring the group of projects in cases where the projects are carried out by different competent authorities.

(2) The “body responsible for implementation”

- (a) For projects assisted by ISPA the “body responsible for implementation” is the body responsible for the tenders and contracting. This body is indicated in Annex I, point 3, of the financing memorandum.

As a consequence, any change of the “body responsible for implementation” of a project has to be approved by the Commission in a financing memorandum.

This body is normally referred to as the final beneficiary of the financial assistance from ISPA. Only this body executes eligible expenditure.

- (b) However this body may delegate the implementation to another body who can also execute eligible expenditure. In such cases the Commission must be informed of the type of delegation proposed and must receive a copy of the relevant documents.

(3) The concept of “public administration”

Public administration is meant to embrace the following three levels of general government:

- Central government bodies, (national level);
- Regional government bodies;
- Local government bodies.

In addition this concept may include bodies whose activities are undertaken within an administrative and legal framework by virtue of which they are regarded as equivalent to public bodies.

(4) Implementation and period of implementation of a project.

- (a) The implementation of a project is considered to cover all stages from preliminary planning (including the study of alternatives) to the completion of the approved project and publicity measures for an assisted project.

- (b) The financing memorandum can apply to one or several of the above stages.
- (c) The implementation period of a project concerns, as a general rule, the period necessary for the completion of the above stages until the point in time at which a project becomes fully operational and at which the physical object described in the financing memorandum has been completed.

(5) Transparency and documentary evidence.

Any expenditure declared to the Commission should be based on legally binding agreements and/or documents. Appropriate documentary evidence is imperative.

In order to maximize transparency and to permit the audit of expenditure by the Commission and/or by the competent national financial control authority, each beneficiary country must ensure that any body involved into the management and the implementation of projects has set up a separate accounting record covering the project described in the financing memorandum.

(6) Expenditure

Expenditure must relate to payments certified and actually made by the body responsible for implementation, supported by receipted invoices or accounting documents of equivalent probative value.

“Accounting document of equivalent probative value” means any document submitted by the authority defined in point 2 of this section to prove that the book entry gives a true and fair view of the actually implied transactions in accordance with standard accountancy practices. Prior agreement of the Commission is necessary when accounting document of equivalent probative value are used.

**Section III
Main categories of eligible expenditure**

As a general rule expenditure relating to

- feasibility studies,
- planning and design including environmental impact assessment,
- site preparation,
- building and construction,
- plant and machinery permanently installed in the project,
- testing and training,
- project management,

- compensatory or mitigation measures of the environmental impact,
 - other types of expenditure specified in a financing memorandum,
 - measures undertaken pursuant to the provisions of Annex III 6 on information and publicity
- are eligible subject to the qualifications specified hereafter.

Section IV
Feasibility studies, project planning and design

(1) Expenditure related to feasibility studies, planning and design of projects

- (a) Expenditure related to feasibility studies, planning including environmental impact assessment studies, project-related expertise and design of projects are, as a general rule, eligible, provided that such expenditure is directly linked to one or several projects and specifically approved by a financing memorandum.
- (b) In those cases where several projects are covered by a contract or where the body responsible for implementation is executing the above functions on its own account, costs have to be imputed by means of a transparent and separate project accounting system based on accounting documents or documents of equivalent probative value (e.g. by means of a time allocation system).

(2) Involvement of public administration

In those cases where employees from the public administration, are involved in the activities mentioned under point 1 (a) of this section, expenditure can only be accepted by the Commission as eligible in duly justified cases according to all of the following criteria:

- the employee must have temporarily left his statutory employment in the public administration;
- expenditure must be based on a contract related to one or several specified project; in the case where a contract relates to several projects, costs have to be allocated in a transparent manner (e.g. by means of time sheets);
- expenditure must be directly linked to one or more individual projects concerned;
- the contract must be limited in time and must not exceed the time limit set for the completion of the project;
- the tasks to be executed under that contract must not cover general administrative functions, as specified herein under section VIII, point 1;

- this provision must not be used to circumvent community public procurement procedures.

Section V **Site preparation and construction**

- (1) In those cases where the body responsible for implementation is executing site preparation or construction works, or parts thereof, on its own account, costs have to be imputed by means of a transparent and separate project accounting system based on accounting documents or documents of equivalent probative value.

In cases where public administration employees are involved the provisions specified in section IV, point 2, apply.

- (2) Eligible costs shall include only costs actually borne after the dates specified in section X, point 1, and related directly to the project. Eligible cost may include all or any of the following categories:
- labour costs (gross wages and salaries);
 - charges for using durable equipment during construction;
 - cost of products used for the implementation of the project;
 - overheads and other cost items, if specifically justified; they are to be allocated in an equitable manner, in accordance with generally recognised accounting standards.
 - imputed overheads are not eligible in the case where the body mentioned under (a) above is a public administration.
- (3) As a general rule, cost should be valued at market prices.

Section VI **Purchase, lease of equipment and intangible assets.**

- (1) **Durable equipment that is part of capital expenditure of the project**
- (a) Expenditure on purchase or production of plant and equipment that is to be permanently installed and fixed in the project is eligible, provided that it is placed under inventory of durable equipment of the body specified under Section II (2) and that it is treated as capital expenditure in accordance with standard accounting conventions.
 - (b) Without prejudice to Section IX (3), the lease of such equipment is considered as part of the operation cost and is not eligible.
- (2) **The purchase of intangible assets**

The purchase and use of intangible assets, as for example patents, are eligible if they are necessary for the implementation of the project.

(3) Durable equipment used for the implementation of a project

- (a) In the cases where the body responsible for implementation is executing site preparation or construction works, or parts thereof on its own account, expenditure on the purchase or production of durable equipment that is employed during the implementation phase of a project is not eligible. This concerns heavy construction machines as well as office and other types of equipment.
- (b) Durable equipment that is expressly purchased or produced for implementing a project can be considered eligible if it is without economic value or scrapped after use and if so specified in the financing memorandum.

(4) Durable equipment used by public administrations

- (a) Expenditure on the purchase and leasing of durable equipment used by public administration is not eligible.
- (b) Without prejudice to Section VIII (2) and (3), expenditure on equipment and leasing charges for equipment used by a public administration in the pursuit of its monitoring and supervision task can be eligible with the agreement of the Commission.

**Section VII
Land purchase and Value Added Tax**

Land purchase and value Added tax (VAT) are not eligible.

**Section VIII
Administrative expenditure**

(1) General principle

As a general rule, expenditure incurred by public administrations, including salaries of national, regional and local statutory employees are not eligible for assistance (including technical assistance) except for dully documented expenditure arising from the obligation to carry out financial checks, financial and physical monitoring, evaluation and prevention of irregularities and expenditure entered into under the obligation to recover amounts lost.

With the exception of the National Fund, costs including salaries linked to the temporary employment, at the initiative of the Commission, of staff whether temporary civil servants or staff from the private sector for work involving management, follow up, evaluation and control are eligible under the technical support measure as defined in Section I (3).

Equipment for monitoring purposes may be eligible if specifically allowed by a technical assistance measure mentioned within the financing memorandum.

(2) Organisation of Monitoring Committees

- (a) Without prejudice to point 1 above expenditure incurred for the organization of statutory monitoring is eligible on presentation of documentary evidence.
- (b) Allowable costs may, as general rule, include one or more of the following categories:
- interpreter services,
 - lease of meeting room and ancillary arrangements,
 - lease of audio-visual and other necessary electronic equipment,
 - provision of documentation and related facilities,
 - fees for participation of experts,
 - travel expenditure.
- (c) Salaries and allowances of public administration employees incurred in this context are not eligible.

(3) Meetings upon request of the Commission.

The rules specified in point 2 above may be applied by analogy for the organisation of ad hoc meetings upon the request of the Commission.

**Section IX
Other types of expenditure.**

(1) Project management and project supervision

Expenditure related to project management and project supervision is, as a general rule, eligible. The provisions specified in Section IV (1) and (2) apply.

(2) Financial charges

Any type of financial charge linked to the realization of a project is not eligible; this concerns in particular interest on interim financing, bank fees, provision fees, etc.

Bank guarantees related to bank loans used for the financing of project can be eligible with the agreement of the Commission.

(3) Financing techniques not implying an immediate transfer of asset ownership

Without prejudice to point 2, financing techniques, which do not necessarily imply an immediate transfer of asset ownership, can be considered eligible, if justified and approved in the financing memorandum.

The beneficiary country has to demonstrate through a risk analysis that the technique used is economically more advantageous than outright acquisition of an asset.

(4) Operating expenditure, running costs of assisted projects

- (a) Any type of operating cost incurred after the completion of a project is not eligible.
- (b) Notwithstanding point (a) above training of operating personnel and testing of a project and of its equipment may be taken into consideration as eligible expenditure for a necessary period defined in a financing memorandum.
- (c) The principles defined in points (a) and (b) above hold also for a completed individual part of a project or a grouped project, albeit the total project has not yet been completed.

(5) Publicity and information measures

Expenditure for measures undertaken pursuant to the provisions of Annex III.6 on information and publicity is eligible.

**Section X
Period of Eligibility**

(1) Initial time limit on eligibility

The initial time limit on eligibility is assessed differently according to the two following situations:

- (a) when project selection, tendering and contracting by applicant countries is subject to ex-ante approval by the Commission⁶, expenditure is eligible for assistance from the date the financing memorandum related to this project is signed by the Commission.

In exceptional cases and when project funding is made up of a combination of loan either from the EIB or another financial institution and ISPA grant, expenditure is eligible for assistance from the date of the agreement of the EIB or of the other financial institution on the particular project. As a general rule this date should not be earlier than 6 months from the date mentioned under the first sub paragraph. The following conditions are a prerequisite:

⁶ See Article 12, (1), of Council Regulation (EC) n° 1266/99 of 21 June 1999.

- The works and the contracts for which the provision shall apply must be identified in the financing memorandum;
- The EIB or other financial institution certify that the provisions of Articles 167 and 168 (1) of the Council Regulation (EC, Euratom) n° 1605/2002 and provisions of Article 239 and 240 of Commission Regulation (EC, Euratom) n° 2342/2002 are respected;

In the above cases the Commission is, as a general rule, disposed to apply after examination by the ISPA Management Committee the provision of Article 168 (2) of the Financial Regulation applicable to the general budget of the European Communities.

- (b) after the decision of the Commission to confer aid on implementing agencies in applicant countries on a decentralized basis⁷, expenditure is eligible for assistance from the date on which the application reaches the Commission (ISPA service) provided that the application can be considered complete.

Payments made before the dates specified in (a) and (b) above are not eligible.

(2) Modification of projects

- (a) Any modification of an approved project, which equals or is above EUR 5 million or 20% of its total cost whatever is the lowest, is deemed to be a “substantial” modification of the project. Major modifications to the physical objects of a project that are such that the nature of this project is changed are also treated as “substantial”.

The rules set up under paragraph 1 apply for the eligibility of expenditure related to those modifications as defined above.

- (b) For any other modification of a project, expenditure related to the new additional or extended physical elements are eligible from the time at which the request for modification reaches the Commission (ISPA service).
- (c) Request for modifications and the relevant information attached to it can be presented at a Monitoring Committee. A record of the request and of the deposition of material must be made in the minutes of the meeting.

(3) Final time limit on eligibility

- (a) The final date of eligibility is specified, as a general rule, in Article 4, paragraph 3 of the financing memorandum.

⁷ See Article 12,(2), of Council Regulation (EC) n° 1266/99 of 21 June 1999.

- (b) The final date relates to payments made by the body responsible for implementation.
- (c) The final date of eligibility is laid down in the relevant financing memorandum. After that date has expired the beneficiary state disposes of a period of six months to submit to the Commission the final payment claim together with the final report and a statement as specified in Section III (6) of Annex III.1 and in Annex III. 4.C to the financing memorandum.
- (d) The Commission cannot extend this six –months period.

Section XI Payment claims

Payment claims presented to the Commission by beneficiary countries are based on declarations of expenditure actually paid out as defined in section II point 6.

In the case of work undertaken by a concessionaire or equivalent body, the responsible government authority must certify the correctness of the expenditure.

Payment claims must be registered and certified by the National Authorising Officer. Claims are then forwarded to the Commission via the Commission Delegation.

Section XII Other items not specifically specified.

- (1) Whenever questions arise which are not specifically dealt with in these principles governing eligibility of expenditure in the framework of projects assisted by ISPA the matter shall be discussed with the Commission. The Commission will endeavor to handle open questions in the spirit enshrined in these principles and with due reference to the principles established for the Cohesion Fund.
- (2) In case of a conflict between these principles and those under national eligibility rules the above-mentioned principles shall take precedence.

**MODEL FOR SUBMISSION TO THE MONITORING COMMITTEE
OF**

ISPA MONITORING SHEET

All data in the report should be up to 30 June or 31 December

1A. MEASURE IDENTIFICATION

Name of measure:
ISPA Financing Memorandum reference N°:
Implementing Agency:
Rate of ISPA assistance:
Signature of Financing Memorandum - Commission
- Country
Amendment number - Commission
- Country

1B. IMPLEMENTING AGENCY (IA)

Name:
Address:
Post Code: Town
Contact Name:
Telephone No.:
E-mail:

2. BRIEF CHRONOLOGICAL DESCRIPTION OF ACTIVITIES/WORKS CARRIED OUT

3. SPECIFIC CONDITIONS RELATED TO THE MEASURE (ARTICLE 8 OF FINANCING MEMORANDUM FM)

Refer to specific conditions, if any, and state how they have been complied with as well as the date of fulfilment (the reference of the Commission correspondence acknowledging fulfilment of those conditions already complied with).

4. UPDATE OF PROCUREMENT PLAN

Contract (N ^o , Type & Description) *	Date of publication of tender forecast	Type of tender envisaged**	Date of publication of tender notice		Cost contract /estimated cost of contract € million	Type of co- financing Joint/ parallel	Date of Signature and name of the company awarded/ State of Play***
			If not published Estimated Date	If published Date, OJ Ref and Internet.			
Signed							
Under preparation							

(*) Specify the main contract.

(**) Indicate whether the contract agreement will be either Red, Yellow or Silver book. Specify if it is a local, international or restricted tender and give justification for procedure in case of pre-qualification.

(***) For the contracts under preparation, please give some details about the stage of preparation of the tender documents.

5.

EXPENDITURE PLAN (UNIT: €)

Year	Total eligible cost		Actual Realised Payments		Future Estimated Expenditure		Total Expenditure		Divergence/ Total Cost%
	Initial estimation [*]	Current accepted estimation ^{**}	(up to cut-off date)	(%) (3)/(2)	(as from cut-off date)	(%) (5)/(2)	(7)=(3)+(5)	(%) (7)/(2)	(9)=((7)-(2))/total (2)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2000									
2001									
2002									
Quarter 1									
Quarter 2									
Quarter 3									
Quarter 4									
2003									
Quarter 1									
Quarter 2									
Quarter 3									
Quarter 4									
2004									
2005									
2006									
Total									

Proposed change to the Financial Plan Yes No

Already submitted to the EC on:

To be submitted to the EC on:

To be presented at the Monitoring Committee (append plan and reasons for change)

* At the moment of the signature of the Financing Memorandum

** Last Monitoring Committee

6. ADVANCED INFORMATION SHEET FOR PHYSICAL & FINANCIAL EXECUTION (*)											
Physical execution						Financial execution					
Categories of eligible expenditure (*)	Physical indicators (*)		Physical execution since last monitoring committee (cut-off date)	Physical execution up to this monitoring committee (cut-off date)	Rate of physical execution %	Financial Indicators		Expenditure since last monitoring committee (cut-off date)	Expenditure up to this monitoring committee (cut-off date)	Rate of financial execution %	contribution to Physical progress
	Unit	Quantity				Estimated eligible cost (€)	% of cost				
	(1)		(2)	(3)	4=(3)/(1) (%)	(5)	(6)	(7)	(8)	9=8/5	10=4*6/100
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
TOTAL						0	#DIV/0!	0	0	#DIV/0!	#DIV/0!
										Overall financial progress	Overall physical progress

(*) coverage of 100% of the total eligible cost

7. REASON FOR DIFFERENCES (IF ANY) BETWEEN PHYSICAL & FINANCIAL EXECUTION EXPLANATION FOR DELAYS (IF APPROPRIATE)

8. TECHNICAL, FINANCIAL OR LEGAL PROBLEMS (ANNEX III.1 OF FM)

Refer to any problems that have arisen in the implementation of the measure, including departures from the original financial plan, and explain what action has been taken to correct them.

Refer to any suspension, Financial correction and/or irregularity.

9. OBSERVATIONS AND RECOMMENDATIONS OF NATIONAL AND/OR COMMUNITY INSPECTION AUTHORITIES (ANNEX III.1 OF FM)

Give summary observations or recommendations, if any, (with full reference to source), and state how they have been complied with.

10. MEASURES ADOPTED TO ADVERTISE COMMUNITY ASSISTANCE (ANNEX III.6 OF FM)

Billboards erected at the site?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Billboards erected at the site?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Billboards erected at the site?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Media used to inform the public of the measure in hand:		
Press <input type="checkbox"/>	Television <input type="checkbox"/>	Radio <input type="checkbox"/>

Other audio-visual media

Type of written documentation made available to the public:

11. EXPECTED COMPLETION DATE

In initial FM (end date fixed in the initial FM)

In Current FM (end date in modified FM)

Expected completion date

Modification of date to be proposed at MC: Yes No

MODEL FOR INTRODUCING MODIFICATION

ISPA MODIFICATION PROPOSAL

Body responsible for implementation:

1. MEASURE IDENTIFICATION	
Name of measure:	
Body responsible for implementation:	
ISPA Measure Code:	
Financing Memorandum No:	Date:
Rate of ISPA assistance:	

2. CHANGE OF COMPLETION DATE	
Current completion date:	Proposed date for completion:

3. PROPOSED CHANGES TO THE FINANCIAL PLAN (*)		UNIT: €
	Total eligible expenditure according to current FM	Eligible expenditure spent or total expenditure forecast
2000		
2001		
2002		
2003		
2004		
2005		
2006		
After 2006		
Total		
Application for increase in Assistance		Yes <input type="checkbox"/> No <input type="checkbox"/>
Amount of increase requested (where applicable) €		
(*) attach modified financial plan		

4. CHANGES IN ELIGIBLE MEASURE COSTS			UNIT: €
Category of expenditure (*)	Current Total Eligible Cost	Change requested	Proposed Total Eligible Cost
Planning/design fees			
Site preparation			
Main works			
Plant and machinery			
Technical assistance			
Supervision			
Other (specify)			
Total			

(*) The categories are examples, which have to be adjusted in order to reflect project realities. An additional breakdown by contract may be appropriate.

5. CHANGES IN PHYSICAL INDICATORS			
Type of work	Unit	Current estimate to completion	Proposed

6. CHANGES IN THE CHARACTERISTICS OF THE MEASURE
Give detailed description

7. REASONS FOR PROPOSED CHANGES
Give detailed arguments

Modification proposal:

Date of submission of modification proposal:

Signature of NIC:

Annex III.4

Management and control systems for assistance granted from ISPA and the procedure for making financial corrections

Section I

This Annex lays down detailed rules as regards the management and control systems for assistance granted from ISPA and as regards the procedure for making financial corrections to such assistance.

Section 2

Management and control systems

1. Each Beneficiary Country shall ensure that:
 - (i) the National ISPA Co-ordinator,
 - (ii) the National Fund and the National Authorising Officer,
 - (iii) the Implementing Agencies and the Sectoral Authorising Officers, and
 - (iv) the Final Beneficiaries

as defined in the ISPA Memorandum of Understanding on the utilisation of the National Fund for ISPA receive adequate guidance on the provision of management and control systems necessary to ensure the sound management of ISPA in accordance with generally accepted principles and standards, and in particular to provide adequate assurance of the correctness, regularity and eligibility of claims on ISPA assistance but also to ensure that measures are carried out in accordance with the terms of the Financing Memorandum and with the objectives assigned to the measure.
2. For the purposes of this Annex, the “implementing agencies” shall include bodies others than the final beneficiaries to which the implementation of measures assisted by ISPA is delegated by the implementing agency or sectoral authorising officer (hereinafter called “delegated bodies”).
3. For the purposes of this Annex, except where otherwise stated “measures” mean individual projects, stages of projects or groups of projects falling within Annex III.2, section II (1) which is the subject of a Financing Memorandum.

Section 3

1. The management and control systems of the National ISPA Co-ordinator, the National Fund, the implementing agencies, the delegated bodies and the final beneficiaries shall, subject to proportionality in relation to the volume of assistance administered, provide for:

- (a) a clear definition, a clear allocation and, insofar as it is necessary for sound management, an adequate separation of functions within the organisation concerned;
- (b) effective systems for ensuring that the functions are performed in a satisfactory manner;
- (c) in the case of delegated bodies and final beneficiaries, reporting to the authority responsible on the performance of their tasks and the means employed.

Section 4

1. The management and control systems referred to Section 3 shall include procedures to verify the authenticity of the expenditure claimed and execution of the measure from its preparatory stage through to the entry into service of the financed investment in accordance with the terms of the relevant Financing Memorandum, with the objectives assigned to the measure, and with applicable national and Community rules on, in particular, the eligibility of expenditure for support from ISPA, protection of the environment, transport (including trans-European networks), competition and the award of public contracts.

Verifications shall cover all aspects, whether of a financial, technical or administrative nature, that determine the effective utilisation of the assistance committed.

2. The procedures shall require the recording of verifications of measures on the spot. The records shall state the work done, the results of the verification and the measures taken in respect of discrepancies. Where any physical or administrative verifications are not exhaustive, but performed on a sample of works or transactions, the records shall identify the works or transactions selected and describe the sampling method.

Section 5

1. The Beneficiary Country shall inform the Commission, within three months of the entry into force of the Financing Memorandum, of the organisation of the National ISPA Co-ordinator, the National Fund, the implementing agencies and delegated bodies responsible for ISPA measures as identified in Section 2, of the management and control systems in place in these authorities or bodies and of improvements planned pursuant to the guidance referred to in Section 2 (1).

2. The communication shall contain the following information in respect of the National ISPA Co-ordinator, the National Fund, implementing agencies and delegated bodies:
 - (a) the functions vested in them,
 - (b) the allocation of functions between or within their departments,
 - (c) the procedures for the inspection and acceptance of works and by which claims for reimbursement of expenditure are received, verified and validated, and by which payments to beneficiaries are authorised, executed and accounted for, and
 - (d) the provisions for the audit of management and control systems.
3. The Commission shall, in co-operation with the Beneficiary Country, satisfy itself that the management and control systems presented under paragraphs 1 and 2 meet the standards required by this Annex, and shall make known any obstacles which they present to the transparency of checks on the operation of ISPA and to the Commission's discharge of its responsibilities. Reviews of the operation of the systems shall be undertaken on a regular basis.

Section 6

1. The management and control systems for measures shall provide a sufficient audit trail.
2. An audit trail shall be considered sufficient where it permits:
 - (a) reconciliation of the summary amounts certified to the Commission with the individual expenditure records and supporting documents held at the various administrative levels, by the implementing agencies and the final beneficiaries;
 - (b) verification of the allocation and transfer of the available Community and national funds;
 - (c) verification of the correctness of the information supplied on the execution of the measure in accordance with the terms of the Financing Memorandum granting the assistance and the objectives assigned to the measure.
3. An indicative description of the information requirements for a sufficient audit trail is given in Annex III.4 A.
4. The Beneficiary Country shall satisfy itself on the following points:
 - (a) that there are procedures to ensure that documents that are relevant to specific items of expenditure incurred, payments made, works undertaken and verification of them carried out in connection with the measure, and which are required for a sufficient audit trail, are held in

accordance with the requirements of Section X of Annex III.1 and with Annex III.4 A;

- (b) that a record is maintained of the body holding them and its location;
 - (c) that the documents are made available for inspection by the persons and bodies who would normally have the right to inspect such documents.
5. The persons and bodies referred to in paragraph 4 (c) shall be:
- (a) the staff of the National ISPA Co-ordinator, the National Fund, implementing agencies and delegated bodies who process payment claims;
 - (b) the services undertaking audits of management and control systems;
 - (c) the National Authorising Officer as person responsible for certifying interim and final payment claims under Section III (8) of Annex III.1 and the person or department which issues declarations at winding-up of measures as attached in Annex III.4.C,
 - (d) mandated officials of national audit institutions and of the Community.

They may require that extracts or copies of the documents or accounting records referred to in paragraph 4 be supplied to them.

Section 7

The National Fund shall keep an account of amounts recoverable from payments of ISPA assistance already made, and ensure that the amounts are recovered without unjustified delay. After recovery, it shall repay the irregular payments recovered, together with interest received on account of late payment, by deducting the amounts concerned from its next statement of expenditure and request for payment to the Commission in respect of the measure concerned. If this is insufficient, the Commission may request that the excess amount be refunded to it.

The National Fund shall send the Commission once a year, in annex to the fourth quarterly report on recoveries supplied under Annex III.5, a statement of the amounts awaiting recovery from ISPA measures at that date, classified by the year of initiation of the recovery proceedings.

Section 8 **Certification of expenditure**

1. The certificates and statement of interim and final expenditure referred to in Annex III.1, section III (6), fifth indent and (8) shall be drawn up in the form prescribed in Annex III.4.B by the National Authorising Officer that is functionally independent of any services that approve claims.

2. Before certifying a given statement of expenditure, the National Authorising officer shall satisfy itself that the following conditions are fulfilled:
- (a) the National ISPA Co-ordinator, the implementing agencies, the delegated bodies and the final beneficiaries have fulfilled the requirements of Sections III (3) and (6), VII of Annex III.1 and observed the terms of the Financing Memorandum;
 - (b) the statement of expenditure includes only expenditure:
 - (i) that has been actually effected within the eligibility period laid down in the Financing Memorandum granting the assistance and can be supported by received invoices or accounting documents of equivalent probative value,
 - (ii) relating to works that had not been essentially completed at the time the application for assistance was lodged,
 - (iii) that are justified by the progress or completion of the measure in accordance with the terms of the Financing Memorandum granting the assistance and to the objectives assigned to the measure.
3. So that the sufficiency of the control systems and the audit trail can always be taken into account before a statement of expenditure is presented to the Commission, the Beneficiary Country shall ensure that the National Fund is kept informed of the procedures operated by the National ISPA Co-ordinator, by the implementing agencies and by delegated bodies to:
- (a) verify the authenticity of expenditure claimed and execution of the measure in accordance with the terms of the Financing Memorandum and the objectives assigned to the measure;
 - (b) ensure compliance with the applicable rules; and
 - (c) maintain the audit trail.

Section 9 Sample checks

1. The Beneficiary Country shall organise checks on measures on an appropriate sampling basis, designed in particular to:
- (a) verify the effectiveness of the management and control systems in place;
 - (b) verify selectively, on the basis of risk analysis, expenditure declarations made at the various levels concerned.
2. The checks carried out for the period covered by ISPA assistance shall cover at least 15 % of the total eligible expenditure incurred on measures approved

during that period. This percentage may be reduced in proportion to the expenditure incurred before the 1 January 2003. The checks shall be based on a representative sample of transactions, taking account of the requirements of paragraph 3.

The Beneficiary Country shall endeavour to spread the implementation of the checks evenly over the period concerned. They shall ensure an appropriate separation of tasks as between such checks and implementation or payment procedures concerning measures.

3. The selection of the sample of transactions to be checked shall take into account:
 - (a) the need to check an appropriate mix of types and sizes of measures;
 - (b) any risk factors which have been identified by national or Community checks;
 - (c) the need to ensure that the different types of body involved in the management and implementation of measures and the two sectors of activity (transport and the environment) are satisfactorily checked.

Section 10

Through the checks, the Beneficiary Country shall endeavour to verify the following:

- (a) the practical application and effectiveness of the management and control systems;
- (b) the execution of the measure in accordance with the terms of the Financing Memorandum granting the assistance and the objectives assigned to the measure;
- (c) for an adequate number of accounting records, the correspondence of those records with supporting documents held by the implementing agencies, delegated bodies and final beneficiaries;
- (d) the presence of a sufficient audit trail;
- (e) for an adequate number of expenditure items, that the nature and timing of the relevant expenditure comply with Community provisions and correspond to the approved specifications of the measure and the works actually executed;
- (f) that the appropriate national co-financing has in fact been made available; and
- (g) that the co-financed measures have been implemented in accordance with Community rules and policies as required by Article 5 of the Financing Memorandum.

Section 11

The checks shall establish whether any problems encountered are of a systemic character, entailing a risk for other or all measures carried out by the same implementing agencies or in the Beneficiary Country concerned. They shall also identify the causes of such situations, any further examination which may be required and the necessary corrective and preventive action.

Section 12

Each Beneficiary Country and the Commission shall consult at least once a year with a view to co-ordinating their programmes of controls so as to maximise the useful effect of the overall resources devoted to controls at national and Community level. These consultations shall cover the risk analysis techniques to be applied and shall take account of recent controls, reports and communications by national authorities, the Commission and the European Court of Auditors.

Section 13

In accordance with Section 12, the Beneficiary Country shall inform the Commission by 30 June each year, and for the first time by 30 June 2002, of their application of Sections 9 to 11 of this Annex in the previous calendar year and in addition provide any necessary completion or updating of the description of their management and control systems communicated under Section 5(1).

Section 14

Declaration of winding-up of projects

The person or department designated to issue declarations on the winding-up of measures under Annex III.4.C shall have a function independent of the National ISPA Co-ordinator, the National Authorising Officer, National Fund, implementing agencies, delegated bodies and final beneficiaries.

It shall conduct its examination according to internationally accepted auditing standards. It shall be supplied by the National ISPA Co-ordinator, the National Fund, implementing agencies, delegated bodies and final beneficiaries with all information required and shall be given access to the records and supporting evidence necessary for drawing up the declaration.

Section 15

Declarations shall be based on an examination of the management and control systems, of the findings of checks already carried out and, where necessary, of a further sample check of transactions and of the final report drawn up under Section V of Annex III.1. The person or department issuing the declaration shall make all necessary enquiries to obtain reasonable assurance that the certified statement of expenditure is correct, that the underlying transactions are legal and regular and that the measure has been carried out in accordance with the terms of the Financing Memorandum and the objectives assigned to the measure.

Declarations shall be drawn up on the basis of the indicative model in Annex III.4.C and shall be accompanied by a report which shall include all relevant information to justify the declaration, including a summary of the findings of all checks carried out by national and Community bodies to which the declarant has had access.

Section 16

If the presence of important management or control weaknesses, or the high frequency of irregularities encountered or doubts about whether the measure has been properly implemented does not allow the provision of a positive overall assurance as to the validity of the request for payment of the final balance and the final certificate of expenditure, the declaration shall refer to these circumstances and shall estimate the extent of the problem and its financial impact.

In such a case the Commission may ask that a further check be carried out with a view to the identification and rectification of irregularities within a specified period of time.

Section 17

Accounting information to be held and communicated to the Commission on request

1. The accounting records on measures referred to in Annex III.4.A shall as far as possible be held in computerised form. Such records shall be made available to the Commission on specific request for the purpose of carrying out documentary and on-the-spot checks, without prejudice to the requirements to supply progress reports under Section VIII of Annex III.1.
2. At the written request of the Commission, the Beneficiary Country shall deliver to the Commission the records referred to in paragraph 1 within 10 working days of receipt of the request. A different period may be agreed between the Commission and the Beneficiary Country, particularly where the records are not available in computerised form.
3. The Commission shall ensure that the information forwarded by the Beneficiary Country or collected by it in the course of on-the-spot inspections is kept confidential and secure.
4. Subject to the relevant national laws, Commission officials shall have access to all documents prepared either with a view to or following controls carried out under this Annex and to the data held, including those stored in computer systems.

Section 18

Financial corrections

1. If, after completing the necessary verifications, the Commission concludes that:
 - (a) the implementation of a measure does not justify either part or the whole of the assistance granted to it, including a failure to comply with

one of the conditions in the Financing Memorandum to grant assistance and in particular any significant change affecting the nature or conditions of implementation of the measure for which the Commission's approval has not been sought, or

- (b) there is an irregularity with regard to assistance from ISPA and that the Beneficiary Country concerned has not taken the necessary corrective measures,

the Commission shall suspend the assistance in respect of the measure concerned and stating its reason, request that the Beneficiary Country submits its comments within a specified period of time.

If the Beneficiary Country objects to the observations made by the Commission, the Beneficiary Country shall be invited to a hearing by the Commission, in which both sides make efforts to reach an agreement about the observations and the conclusions to be drawn from them.

- 2. At the end of the period set by the Commission, the Commission shall, subject to the respect of due procedure, if no agreement has been reached within three months, taking into account any comments made by the Beneficiary Country, decide to:
 - (a) reduce the advance payment referred to in Section III (2) of Annex III.1, or
 - (b) make the financial corrections required. This shall mean cancelling all or part of the assistance granted to the measure.

These decisions shall respect the principle of proportionality. The Commission shall, when deciding the amount of a correction, take account of the type of irregularity or change and the extent of the potential financial impact of any shortcomings in the management or control systems. Any reduction or cancellation shall give rise to recovery of the sums paid.

- 3. Any sum received unduly and to be recovered shall be paid to the Commission. Interest on account of late repayment shall be charged in accordance with the rules laid down in Section 21.

Section 19

- 1. The amount of financial corrections made by the Commission under Section 18 (2) for individual or systemic irregularities shall be assessed wherever this is possible and practicable on the basis of individual files and shall be equal to the amount of expenditure wrongly charged to ISPA, having regard to the principle of proportionality.
- 2. When it is not possible or practicable to quantify the amount of irregular expenditure precisely, or when it would be disproportionate to cancel entirely

the expenditure in question, and the Commission therefore bases its financial corrections on extrapolation or a flat rate, it shall proceed as follows:

- (a) in the case of extrapolation, it shall use a representative sample of transactions with like characteristics;
 - (b) in the case of a flat rate, it shall assess the importance of the infringement of rules and the extent and financial implications of any shortcomings in the management and control system that have led to the irregularity established.
3. Where the Commission bases its position on the facts established by auditors other than those of its own services, it shall draw its own conclusions regarding their financial consequences, after examining the measures taken by the Beneficiary Country concerned under Section VII of Annex III.1, Sections 18 (1) and (2) of this Annex, the reports supplied under Annex III.5 and any replies from the Beneficiary Country.

Section 20

1. The period of time within which the Beneficiary Country concerned may respond to a request under Section 18.(1), submit its comments and, where appropriate, make corrections, shall be two months, except in duly justified cases where a longer period may be agreed by the Commission.
2. Where the Commission proposes financial corrections on the basis of extrapolation or at a flat rate, the Beneficiary Country shall be given the opportunity to demonstrate, through an examination of the files concerned, that the actual extent of irregularity was less than the Commission's assessment. In agreement with the Commission, the Beneficiary Country may limit the scope of this examination to an appropriate proportion or sample of the files concerned.

Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1. The results of such examination shall be examined in the manner specified in the second subparagraph of Section 18 (1). The Commission shall take account of any evidence supplied by the Beneficiary Country within the time limits.

3. Whenever the Beneficiary Country objects to the observations made by the Commission and a hearing takes place under the second subparagraph of Section 18 (1), the three-month period within which the Commission may take a decision shall begin to run from the date of the hearing.

Section 21

1. Any repayment due to be made to the Commission pursuant to Section 18.3 shall be effected before the due date indicated in the request sent to the National Authorising Officer. This due date shall be the last day of the

second month following the date of transmission of the request for repayment.

2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date referred to in paragraph 1 and ending on the date of actual payment. The rate of such interest shall be one and a half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.
3. A financial correction under Section 18 (2) shall not prejudice the Beneficiary Country's obligation to pursue recoveries under Section VII of Annex III.1.
4. When amounts are to be recovered following a financial correction, the competent service or body shall initiate recovery proceedings and notify the National ISPA Co-ordinator, the National Fund and the implementing agencies thereof.

Section 22

Nothing in this Annex shall prevent the Beneficiary Country applying rules more rigorous than those prescribed herein.

**INDICATIVE DESCRIPTION OF INFORMATION REQUIREMENTS FOR A
SUFFICIENT AUDIT TRAIL (Section 6)**

A sufficient audit trail, as referred to in Section 6(2), is present when, for a given measure, including individual projects within a group of projects:

1. Accounting records kept at the appropriate management level provide detailed information about expenditure actually incurred in the co-financed measure by the implementing agency, including where the latter is not the final recipient of funding, the bodies and firms involved in the implementation of the measure, whether as concession-holders, delegates or otherwise. The accounting records show the date they were created, the amount of each item of expenditure, the nature of the supporting documents and the date and method of payment. The necessary documentary evidence (e.g., invoices) is attached.
2. For items of expenditure relating only partly to the co-financed measure, the accuracy of the allocation of the expenditure between the co-financed measure and the rest is demonstrated. The same applies to types of expenditure that are considered eligible only within certain limits or in proportion to other costs.
3. The technical specifications and financial plan of the measure, progress reports, documents concerning tendering and contracting procedures, and reports on inspections of the execution of the measure in accordance with Section 4 are also kept at the appropriate management level.
4. For declaring expenditure actually incurred in the co-financed measure to the National Fund, the information referred to in paragraph 1 is aggregated into a detailed statement of expenditure broken down by category. The detailed statements of expenditure constitute supporting documents for the accounting records of the National Fund and are the basis for the preparation of declarations of expenditure to the Commission.
5. Where there is one or more delegated bodies between the implementing agency or the bodies or firms involved in implementation of the measure and the National Fund, each delegated body for its area of responsibility requires detailed statements of expenditure from the body below it as supporting documentation for its own accounting records, from which it provides at least a summary of the expenditure incurred on the measure to the body above it.
6. In the case of computerised transfer of accounting data, all the authorities and bodies concerned obtain sufficient information from the lower level to justify their accounting records and the sums reported upwards, so as to ensure a sufficient audit trail from the total summary amounts certified to the Commission down to the individual expenditure items and the supporting documents at the level of the implementing agency and the other bodies and firms involved in the implementation of the measure.

INTERIM/FINAL CERTIFICATE AND STATEMENT OF EXPENDITURE AND APPLICATION FOR PAYMENT

EUROPEAN COMMISSION
ISPA

Interim/final certificate and statement of expenditure and application for payment
(to be sent to Unit ... of DG REGIO through official channels)

Name of measure: _____
Financing Memorandum No _____ of _____
Commission Reference (CCI No) _____

CERTIFICATE

I, _____ the _____ undersigned
National Fund designated _____, representing the _____ by⁸

hereby certify that all eligible expenditure included in the attached statement, representing the contributions of the ISPA and national funding, was paid in line with the progress of the measure

after⁹:

				2	0		
d	d	m	m	y	y	y	y

 and amounts to:

	EUR
--	-----

(exact amount to two decimal places)

The attached statement of expenditure broken down by category of expenditure, and by measure in the case of a group of projects, covers expenditure up to

				2	0		
--	--	--	--	---	---	--	--

 (dd/mm/yyyy)

⁸ Indicate the administrative instrument of designation in accordance with Section III, (8) and (9) of Annex III.1, with appropriate references and the date.
⁹ Starting date for eligibility of expenditure under the Financing Memorandum.

and is an integral part of this certificate, as is the accompanying report on progress of the measure compared with plans/final report.

I also certify that the measure is making satisfactory progress towards completion/has been completed in accordance with the objectives and that the information given in the progress report/final report is correct.

I further certify that the measure is being/has been implemented in accordance with the terms of the Financing Memorandum, in particular as regards:

- (1) compliance with the rules on protection of the environment, transport (including trans-European networks), competition, and the award of public contracts (Practical Guide to Phare, ISPA and Sapard);
- (2) application of management and control procedures to the measure, in particular to verify the reality of expenditure claimed and the proper execution of the measure in accordance with Section 4 and to prevent, detect and correct irregularities, pursue fraud, and recover unduly paid amounts (Annex III.5 thereto).

In accordance with Section X of Annex III.1, the supporting documents are and will continue to be available for a minimum period of five years following payment of the balance by the Commission.

I certify that:

- (1) the statement of expenditure is accurate and results from accounting systems based on verifiable supporting documents;
- (2) the statement of expenditure and the application for payment take account of any recoveries made and interest received thereon;
- (3) details of the underlying transactions are recorded, where possible, on computer files and are available on request to the Commission departments responsible

Date

		2	0		
--	--	---	---	--	--

 (dd/mm/yyyy)

Name in capitals, stamp, position and signature of competent authority

Statement of expenditure incurred in the measure¹⁰

Reference No (CCI code):

Name of measure:

Date:

Category of expenditure	Total expenditure incurred to date (between ... ¹¹ and ...)	Expenditure certified in present declaration	Total expenditure planned (initial budget)	Expenditure incurred to date, as proportion of initial budget (%)	Estimated expenditure still required to complete measure
1. Planning					
2. Feasibility studies, design					
3. Site preparation					
4. Building and construction					
5. Equipment					
6. Technical assistance, preparation					
7. Other					
TOTAL					

¹⁰

For decisions on groups of projects, expenditure must be broken down by projects, except where the expenditure is common to the group, as it in the case of technical assistance or publicity.

¹¹

Starting date for eligibility of expenditure (signature of the Financing Memorandum by the Commission).

Annex to statement of expenditure: recoveries effected since the last certified statement of expenditure and included in the present statement of expenditure

<i>Amount ordered to be recovered</i>	
<i>Debtor</i>	
<i>Date of issue of recovery order</i>	
<i>Authority which issued recovery order</i>	
<i>Date of recovery</i>	
<i>Amount recovered</i>	

APPLICATION FOR INTERIM/FINAL PAYMENT

Name of measure: _____

Commission reference (CCI No) _____

Pursuant to Annex III.1, Section III, I, the undersigned (name in capitals, stamp, position and signature of competent authority), request payment of the amount of EUR _____ as an interim/final payment¹². This application meets the admissibility requirements because:

Delete as appropriate

(a)	the report on the progress of the measure in relation to physical and financial indicators and demonstrating its conformity with the decision granting the assistance, including the specific conditions laid down	- is enclosed
(b)	the latest progress report/the final report on implementation required under the Sections V and VIII of Annex III.1, including in the latter case details of compliance with the Practical Guide for Phare, ISPA and sapard	- has been supplied - is enclosed
(c)	observations and recommendations made by national and/or Community audit authorities, in particular the correction of suspected or proven irregularities	- have been acted upon - no observations or recommendations made
(d)	the main technical, financial and legal problems that have arisen and the measures taken to correct them	- are indicated - none observed
(e)	the analysis of any departures from the original financial plan	- has been supplied - is enclosed
(f)	the publicity measures taken with regard to the measure	- are indicated
(g)	none of the certified expenditure has been suspended pursuant to Section 18 of this Annex.	

Payment should be made to:

Beneficiary:	
Bank:	
Account No	
Account holder (if different from beneficiary)	

Date

		2	0		
--	--	---	---	--	--

 (dd/mm/yyyy)

Name in capitals, stamp, position and signature of competent authority

¹² Delete as appropriate.

INDICATIVE MODEL FOR THE DECLARATION AT THE WINDING UP OF A MEASURE¹³
(Section 14)

To the European Commission, Directorate-General for Regional Policy

INTRODUCTION

1. I, (state name in capitals, title and department), have examined the final statement of expenditure for (name and CCI reference number of ISPA measure) and the application to the Commission for payment of the balance of the Community aid.

SCOPE OF THE EXAMINATION

2. I conducted the examination in accordance with the provisions of Section 14, 15 and 16 of Annex III.4. I planned and performed the examination with a view to obtaining reasonable assurance about whether the final statement of expenditure and application for payment of the balance of the Community aid and the final report are free of material misstatement, particularly as regards the execution of the measure¹⁴ in accordance with the terms and conditions of the decision and the objectives assigned to it. The procedure followed and the information used in the examination, including the conclusions of checks carried out in previous years, are summarized in the attached report.

OBSERVATIONS

3. The scope of the examination has been limited by the following:
 - (a)
 - (b)
 - (c), etc.

(Indicate any obstacles encountered in the examination, for example systemic problems, management weaknesses, lack of audit trail, lack of supporting documentation, cases under legal proceedings, etc.; estimate the amounts of expenditure affected by these obstacles and the corresponding Community aid).

4. The examination, together with the conclusions of other national or Community controls to which I have had access, revealed a low/high (indicate as appropriate; if high, explain) frequency of errors/irregularities. The errors/irregularities reported have been satisfactorily dealt with by the

¹³ In the case of a group of projects subject to a single decision, the declaration covers the group of projects.

¹⁴ Including the individual projects within a group of projects.

responsible authorities and they do not appear to affect the amount of the Community aid payable, with the following exceptions:

- (a)
- (b)
- (c) etc.

(Indicate the errors/irregularities which have not been satisfactorily dealt with, and for each case, the possible systemic character and extent of the problem and the amounts of Community aid which appear to be affected).

CONCLUSION

Either

If no obstacles were encountered in the examination, the frequency of errors found is low and all problems have been satisfactorily dealt with:

- 5(a) In the light of the examination and the conclusions of other national or Community checks to which I have had access, it is my opinion that the final statement of expenditure and the final report present fairly, in all material respects, the expenditure incurred and the work carried out, in accordance with the Financing Memorandum related to the measure and its objectives, and that the application to the Commission for payment of the balance of the Community aid appears to be valid.

Or

If certain obstacles were encountered in the examination but the frequency of errors is not high, or if some problems have not been satisfactorily dealt with:

- 5(b) Except for the matters referred to at point 3 above (and) the errors/irregularities referred to at point 4 which do not appear to have been satisfactorily dealt with, it is my opinion, based on the examination and the conclusions of other national or Community checks to which I have had access, that the final statement of expenditure and the final report present fairly, in all material respects, the expenditure incurred and the work carried out, in accordance with the Financing Memorandum related to the measure and its objectives, and that the application to the Commission for payment of the balance of the Community aid appears to be valid.

Or

If major obstacles were encountered in the examination or the frequency of errors found is high, even if the reported errors/irregularities have been satisfactorily dealt with:

- 5(c) In view of the matters referred to at point 3 (and) given the high frequency of errors reported at point 4, I am not in a position to express an opinion on the final statement of expenditure, final report and application to the Commission for payment of the balance of the Community aid.

Date, signature

Annex III.5

Agreement with respect to

Irregularities, Recovery of Sums Wrongly Received under ISPA and on-the-spot checks

Section 1

This agreement shall not affect the application in the beneficiary countries of rules relating to criminal proceedings or judicial co-operation between beneficiary countries, the Commission and beneficiary countries in criminal matters.

Section 2

- (1) Beneficiary countries shall communicate to the Commission within 3 months of the entry in force of the Financing Memorandum:
 - the provisions laid down by law, regulation or administrative action for the application of the measures assisted under ISPA;
 - the list of authorities and bodies responsible for the application of the measures, the main provisions relating to the role and functioning of those authorities and bodies and to the procedures which they are responsible for applying.
- (2) Beneficiary countries shall communicate forthwith to the Commission any amendments to the information supplied in pursuance of paragraph 1.
- (3) The Commission shall study beneficiary countries' communications and shall inform them of the conclusions, which it intends to draw therefrom. It shall remain in contact with the beneficiary countries to the extent necessary for the application of this Section.

Section 3

“Irregularity” shall mean any infringement of a provision of the financing memorandum, or of the relevant national law, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities by an unjustified item of expenditure.

Section 4

- (1) During the two months following the end of each quarter, beneficiary countries shall report to the Commission, the European anti-fraud office, any irregularities, which have been the subject of initial administrative or judicial investigations.

To this end they shall as far as possible give details concerning:

- the details of the measure assisted by ISPA,

- the provision which has been infringed, the nature and amount of the expenditure; in cases where no payment has been made, the amounts which would have been wrongly paid had the irregularity not been discovered, except where the error or negligence is detected before payment and does not result in any administrative or judicial penalty,
 - the total amount and its distribution between the different sources of financing,
 - the period during which, or the moment at which, the irregularity was committed,
 - the practices employed in committing the irregularity,
 - the manner in which the irregularity was discovered,
 - the national authorities or bodies which drew up the official report on the irregularity,
 - the financial consequences, the suspension if any of payments and the possibilities of recovery,
 - the date and source of the first information leading to suspicion that an irregularity was in evidence, the date on which the official report on the irregularity was drawn up, where appropriate, the beneficiary country and the third countries involved,
 - the identity of the natural and legal persons involved, save in cases where such information is of no relevance in combating irregularities on account of the character of the irregularity concerned.
- (2) Where some of the information referred to in paragraph 1, and in particular that concerning the practices employed in committing the irregularity and the manner in which it was discovered, is not available, beneficiary countries shall as far as possible supply the missing information when forwarding subsequent quarterly reports of irregularities to the Commission.
- (3) If national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent court of tribunal.

Section 5

Each beneficiary country shall forthwith report to the Commission and, where necessary, to the member states concerned, any irregularities discovered or supposed to have occurred, where it is feared that:

- They may very quickly have repercussions outside its territory and/or,
- They show that a new mal-practice has been employed.

Section 6

During the two months following the end of each quarter, beneficiary countries shall inform the Commission, with reference back to any previous report made under Section 4, of the procedures instituted following all irregularities previously notified and of important changes resulting therefrom, including:

- the amounts, which have been, or are expected to be, recovered,
- the interim measures taken by beneficiary countries to safeguard recovery of sums wrongly paid,
- the judicial and administrative procedures instituted with a view to recovering sums wrongly paid and to imposing sanctions,
- the reasons for any abandonment of recovery procedures; the Commission shall, as far as possible, be notified before a decision is taken,
- any abandonment of criminal prosecutions.

Beneficiary countries shall notify the Commission of administrative or judicial decisions or the main points thereof, concerning the termination of these procedures.

Section 7

Should there be no irregularities to report in the reference period beneficiary countries shall inform the Commission of this fact within the same time limit as is set out in Section 4 (1).

Section 8

Where the competent authorities of a beneficiary country decide, at the express request of the Commission, to initiate or continue legal proceedings with a view to recovering amounts wrongly paid, the Commission may undertake to reimburse to the beneficiary countries all or part of the legal costs and costs arising directly from the legal proceedings, on presentation of documentary evidence, even if the proceedings are unsuccessful.

Section 9

- (1) The Commission shall maintain appropriate contacts with the beneficiary country concerned for the purpose of supplementing the information supplied on the irregularities referred to in Section 4, on the procedure referred to in Section 6, and, in particular, on the possibility of recovery.
- (2) Independently of the contacts mentioned in paragraph 1 the Commission shall inform beneficiary countries where the nature of the irregularity is such as to suggest that identical or similar practices could occur in other beneficiary countries.
- (3) The Commission shall organise information meetings at Community level for representatives of the beneficiary countries in order to examine with them the

information obtained pursuant to Sections 4, 5 and 6, and pursuant to paragraph 1 of this Section, in particular with regard to the lessons to be learned therefrom in connection with irregularities, preventive measures and legal proceedings.

- (4) At the request of a beneficiary country or of the Commission, the beneficiary countries and the Commission shall consult each other for the purpose of closing any loopholes prejudicial to Community interests, which become apparent in the course of the enforcement of provisions in force.

Section 10

The Commission shall regularly inform the beneficiary countries, in the framework of fraud prevention, of the order of magnitude of the funds involved in the irregularities, which have been discovered and of the various categories of irregularity, broken down by type and counted up.

Section 11

- (1) Beneficiary countries and the Commission shall take all necessary precautions to ensure that the information, which they exchange, remains confidential.
- (2) The information referred to in this agreement may not, in particular, be sent to persons other than those in the beneficiary countries or within the Community institutions whose duties require that they have access to it, unless the beneficiary countries supplying it has expressly so agreed.
- (3) The names of natural or legal persons may be disclosed to another beneficiary countries or Community institution only where this is necessary in order to prevent or prosecute an irregularity or to establish whether an alleged irregularity has taken place.
- (4) Information communicated, or acquired in any form whatever pursuant to this agreement shall be covered by professional confidentiality and be protected in the same way as similar information is protected by the national legislation of the beneficiary countries that received it and by the corresponding provisions applicable to the Community institutions.

In addition, that information may not be used for any purposes other than those provided for in this agreement unless the authorities that have provided it have given their express consent, and provided that the provisions in force in the beneficiary countries in which the recipient authority is to be found do not prohibit such communication or use.

- (5) Paragraphs 1 to 4 shall not impede the use, in any legal actions or proceedings subsequently instituted for non-compliance with Community rules in the area of pre-accession aid, of information obtained pursuant to this agreement. The competent authority of the beneficiary countries, which supplied this information, shall be informed forthwith of such use.

- (6) Where a beneficiary country notifies the Commission that a natural or legal person whose name has been communicated to the Commission pursuant to this agreement proves on further inquiry not to be involved in any irregularity, the Commission shall forthwith inform all those to whom it disclosed that name pursuant to this agreement of that fact. Such person shall thereupon cease to be treated, by virtue of the earlier notification, as a person involved in the irregularity in question.

Section 12

The amounts recovered shall be shared by the beneficiary countries and the Community according to the joint co-financing rates in proportion to the expenditure already incurred by them.

Section 13

On-the-spot checks and inspections carried out in order to protect the financial interest of the Community against irregularities as defined at section 3 shall be prepared and conducted by the Commission in close co-operation with the competent authorities of the beneficiary country concerned, which shall be notified in good time of the object and purpose of the checks and inspections by reference to this Annex, so that they can provide all the requisite help. To that end, the officials of the beneficiary country concerned may participate in the on-the-spot checks and inspections.

In addition, if the beneficiary country concerned so wishes, the on-the-spot checks and inspections may be carried out jointly by the Commission and the beneficiary country's competent authorities.

Section 14

On-the-spot checks and inspections shall be carried out by the Commission on economic operators, namely the natural or legal persons and the other entities on which national law confers legal capacity, where there are reasons to think that irregularities have been committed.

In order to make it easier for the Commission to carry out such checks and inspections, economic operators shall be required to grant access to premises, land, means of transport or other areas, used for business purposes.

Where strictly necessary in order to establish whether and irregularity exists, the Commission may carry out on-the-spot checks and inspections on other economic operators concerned, in order to have access to pertinent information held by those operators on facts subject to on-the-spot checks and inspections.

Section 15

- (1) On-the-spot checks and inspections shall be carried out on the Commission's authority and responsibility by its officials or other servants, duly empowered by the relevant Commission regulations, hereinafter called 'Commission inspectors'. Persons placed at the disposal of the Commission by the

beneficiary country as national experts on secondment may assist in such checks and inspections.

Commission inspectors shall exercise their powers on production of a written authorisation showing their identity and position, together with a document indicating the subject-matter and purpose of the on-the-spot check or inspection.

Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the beneficiary country concerned.

- (2) Subject to the agreement of the beneficiary country concerned, the Commission may seek the assistance of officials from the beneficiary countries as observers and call on outside bodies acting under its responsibility to provide technical assistance.

The Commission shall ensure that the aforementioned officials and bodies give every guarantee as regards technical competence, independence and observance of professional secrecy.

Section 16

- (1) Commission inspectors shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

On-the-spot checks and inspections may concern, in particular:

- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by economic operators,
- computer data,
- production, packaging and dispatching systems and methods,
- physical checks as to the nature and quantity of goods or completed operations,
- the taking and checking of samples,
- the progress of works and investments for which financing has been provided, and the use made of completed investments,
- budgetary and accounting documents,
- the financial and technical implementation of subsidised projects.

- (2) Where necessary, it shall be for the beneficiary country, at the Commission's request, to take the appropriate precautionary measures under national law, in particular in order to safeguard evidence.

Section 17

- (1) Information communicated or acquired in any form under this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by the national legislation of the beneficiary country that received it and by the corresponding provisions applicable to the Community institutions.

Such information may not be communicated to persons other than those within the Community institutions or in the beneficiary country whose functions require them to know it nor may it be used by Community institutions for purposes other than to ensure effective protection of the Communities' financial interests in all beneficiary countries. Where a beneficiary country intends to use for other purposes information obtained by officials participating under its authority as observers in on-the-spot checks and inspections, it shall seek the agreement of the beneficiary country where that information was obtained.

- (2) The Commission shall report as soon as possible to the competent authority of the country within whose territory an on-the-spot check or inspection has been performed any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission shall be required to inform the aforementioned authority of the result of such checks and inspections.
- (3) Commission inspectors shall ensure that in drawing up their reports account is taken of the procedural requirements laid down in the national law of the beneficiary country concerned. The material and supporting documents as referred to in Section 16 shall be annexed to the said reports. The reports thus prepared may be used as (admissible) evidence in administrative or judicial proceedings of the beneficiary country in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports. Where an inspection is carried out jointly, the national inspectors who took part in the operation shall be asked to countersign the report drawn up by the Commission inspectors.

Section 18

Where the economic operators referred to in Section 14 resist an on-the-spot check or inspection, the beneficiary country concerned, acting in accordance with national rules, shall give Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

It shall be for the beneficiary country to take any necessary measures in conformity with national law.

Annex III.6

Information and publicity requirements

RULES ON DETAILED ARRANGEMENTS FOR INFORMATION AND PUBLICITY

1. Objectives and scope

Information and publicity measures concerning assistance from ISPA are intended:

- to increase public awareness and transparency of the activities of the European Community,
- to inform the potential beneficiaries and professional organisations about ISPA possibilities.

Information and publicity shall concern all measures for which ISPA provides financial assistance.

The aim of information and publicity measures shall be to inform the general public and also potential and final beneficiaries, including:

- regional, local and any other public authorities,
- the economic and social partners,
- non-governmental organisations,
- project operators and promoters,
- any other interested parties

of the opportunities offered by ISPA.

2. General principles

The body responsible for implementing an ISPA project (hereinafter defined as the “body responsible”) shall be accountable for all publicity measures on the spot. Publicity shall be carried out in co-operation with the Commission departments, which shall be informed of measures taken for this purpose.

The body responsible shall take all the appropriate administrative steps to ensure the effective application of these arrangements and to collaborate with the Commission departments.

Information and publicity measures shall be taken in due time, once the assistance of ISPA is decided. The Commission reserves its right to initiate a procedure for a reduction, suspension or cancellation of the ISPA assistance, if a beneficiary country does not fulfil its obligations under the present Annex. In such cases the procedure specified in Annex III.1 section VIII of the ISPA Financing Memorandum concluded with each beneficiary country applies.

3. *Guidelines for information and publicity activities*

Notwithstanding the detailed rules laid down under point 4, the following principles shall be applied in accordance with all information and publicity measures:

3.1 The media

The body responsible shall inform the media in the most appropriate manner about actions co-financed by ISPA. European Community participation shall be fairly reflected in this information.

To this end, the formal launch of projects and important phases in their implementation shall be the subject of information measures, particularly in respect of regional media (press, radio, and television). Appropriate collaboration must be ensured with the Commission delegations in the beneficiary countries concerned.

3.2 Information events

The organisers of information events such as conferences, seminars, fairs and exhibitions in connection with the implementation of projects part-financed by ISPA shall make explicit the participation of the European Community. The opportunity should be taken of displaying the European Community flag in meeting rooms and the European Community emblem on documents. The Commission delegations in the beneficiary countries shall assist, if necessary, in the preparation and implementation of such events.

3.3 Information material

Publications (such as brochures and pamphlets) about projects or similar measures should contain on the title page a clear indication of the European Community emblem where the national, regional or local emblem is used.

Where publication includes a preface, it should be signed by both the person responsible in the beneficiary country and, for the Commission, the responsible Member of the Commission or a designated representative, to ensure that European Community participation is made clear. Such publications shall refer to the body responsible for informing interested parties.

The above-mentioned principles shall also apply to audio-visual and web-site material.

4. *Obligations of the beneficiary countries*

Information and publicity shall be the subject of a coherent set of measures defined by the body responsible in collaboration with the Commission for the duration of the project. Beneficiary countries shall ensure that representatives of the Commission including its delegations are duly involved in the most important public activities connected with ISPA.

When projects are implemented, the body responsible shall take the following measures to indicate the participation of ISPA in the said project:

a) Project-related information

On the spot information and publicity measures shall be taken in order to make the general public aware of European Community assistance through ISPA. The body responsible should publish the content of the projects in the most appropriate form and ensure that such documents are disseminated to the local, regional media and shall hold them available for interested parties. On the spot measures should include:

- billboards erected on the sites,
- permanent commemorative plaques for infrastructures accessible to the general public

both to be installed in accordance with the Special arrangements concerning on site information detailed hereafter.

b) General ISPA-related information

In addition to (a), the National ISPA Co-ordinator shall produce regularly a general information on ISPA assistance allocated in the country, highlighting the implementation of projects and results achieved. This general information should be produced at least once a year and be made available to the Commission for its annual report. This information will take the form of brochures of general interest, professional audio-visual material (e.g. videoclip) and news conferences at appropriate level. This information shall group projects by nature and / or focus on projects of relevant interest. It should be delivered to national, regional televisions and radio stations, to the Commission and, on demand, to other interested parties as defined in paragraph 1.

5. *The work of the Monitoring Committees*

- The Commission representatives in the Monitoring Committee, in collaboration with the National ISPA co-ordinator, shall ensure compliance with the provisions adopted concerning publicity, particularly those concerning billboards and commemorative plaques (see special arrangements hereafter).
- Information on publicity measures and suitable evidence such as photographs shall be submitted to the Chairman of the Monitoring Committees by the body responsible. Copies of such material shall be transmitted to the Commission.
- The Chairman of the Committees shall forward to the Commission all the information needed to take into account for its annual report.
- The Monitoring Committees shall ensure that there is adequate information concerning their work. To this end, each Monitoring Committee shall inform the media, as often as considered necessary, of the progress of the project(s), for which it is responsible. The Chairman is responsible for contacts with the media and the Commission representative shall assist him.

- Appropriate arrangements shall also be made, in collaboration with the Commission and its delegations in the beneficiary countries, when important events, such as high level meetings or inaugurations, are held.

6. *Final provisions*

The Commission may initiate specific additional measures as deemed appropriate after discussion with the National ISPA co-ordinator and the body responsible.

The body responsible may, in any event, carry out additional measures. It shall consult the Commission and inform it of the initiatives it takes so that the Commission may participate adequately in their realisation.

In order to facilitate the implementation of these provisions, the Commission may provide suitable assistance and may issue guidelines.

Special arrangements concerning billboards and commemorative plaques

In order to assure the visibility of ISPA projects, beneficiary countries shall ensure that the following information and publicity measures are complied with

1. Billboards

Billboards shall be erected on the sites of projects assisted by ISPA. Such billboards shall include a space reserved for the indication of the European Community participation.

Billboards must be of a size, which is appropriate to the scale of the operation.

The section of the billboard reserved for the European Community must meet the following criteria:

- it shall take up at least 50% of the total area of the billboard,
- it shall bear the standardised European Community emblem and the following text to be presented as in the attached example.

Where the body responsible does not erect a billboard announcing their own involvement in the financing of a project, the European Community assistance must be announced on a special billboard. In such cases, the above provisions concerning the European Community part apply by analogy.

Billboards shall be removed no earlier than 6 months after the completion of the work and replaced by a commemorative plaque in accordance with the provisions under point 2.

2. Commemorative plaques

Permanent commemorative plaques shall be placed at sites accessible to the general public. In addition to the European Community emblem, such plaques must mention the European Community contribution to the project.

The following text should be used as a guideline to the contents required:

“This project has been co-financed at % by the European Community. Upon completion in (state year), the total cost of the project was (national currency), and the total contribution of the European Community was of..... (national currency).”

- EXAMPLE -

Title of the Project			
Location			
European emblem			
Financed by:			
	European Union (grant)	... €	... (local currency)
	IFI (loan)	... €	... (local currency)
Implementing authority:	{ Ministry of ... } { Agency of ... }		
Owner:	{ Name of the owner }		
Supervision and management:	{ Name of the Company }		
Contractor:	{ Name of the contractor }		

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